

# **CITY COUNCIL**

## **Meeting Agenda**

**REGULAR MEETING**  
**COUNCIL CHAMBERS**

**MONDAY, SEPT 9, 2013**  
**7:00 P.M.**

*The Regular Meetings of City Council are filmed and can be viewed LIVE while the meeting is taking place or at your convenience at any time after the meeting on the City's website at [www.ReadingPa.gov](http://www.ReadingPa.gov), under Info and Downloads/Meetings and Agenda. All electronic recording devices must be located behind the podium area in Council Chambers and located at the entry door in all other meeting rooms and offices, as per Bill No. 27-2012.*

### **1. OPENING MATTERS**

#### **A. CALL TO ORDER**

**B. INVOCATION:** Rev. Laddie Benton, Washington Presbyterian Church

#### **C. PLEDGE OF ALLEGIANCE**

#### **D. ROLL CALL**

### **2. PROCLAMATIONS AND PRESENTATIONS**

Oath of Office to

- 2<sup>nd</sup> Deputy Fire Chief Sean Hart
- 2<sup>nd</sup> Deputy Chief Frank Nefos Jr.
- Fire Training Lieutenant Gail Knauer
- Fire/EMS Lieutenant David Ciabattoni

Council Commendation to CosPro Development, accepted by Paul Mazzotta, owner and founder

Council Commendation to W.H. Dance Studio, accepted by Wanda Holdren, owner

### **3. PUBLIC COMMENT – AGENDA MATTERS:**

*Citizens have the opportunity to address the Council, by registering with the City Clerk by 5 pm on the day of the scheduled Council meeting. All remarks must be directed to Council as a body and not to any individual Council member or public or elected official in attendance. Any person making personally offensive or impertinent remarks or any person becoming unruly while addressing Council may be called to order by the Presiding Officer and may be barred from speaking before Council, unless permission to continue speaking is granted by the majority vote of Council.*

*All comments by the public shall be made from the speaker's podium. Citizens attending the meeting may not cross into the area beyond the podium. Any materials to be distributed to Council must be given to the City Clerk before the meeting is called to order.*

*Those commenting on agenda business shall speak at the beginning of the meeting and shall limit their remarks to **5 minutes**. Those commenting on general matters shall speak after the legislative business is concluded and shall limit their remarks to **3 minutes**. No comments shall be made from any other location except the podium, and anyone making "out of order" comments may be subject to removal. There will be no demonstration at the conclusion of anyone's remarks. Citizens may not ask questions of Council members or other elected or public officials in attendance.*

#### **4. APPROVAL OF AGENDA**

**A. MINUTES:** Regular Meeting of August 26, 2013

**B. AGENDA:** Regular Meeting of September 9, 2013

#### **5. Consent Agenda Legislation**

**A. Resolution 65-2013** - authorizing the mayor to execute a PY2006 CDBG action plan amendment to use \$8000 in unprogrammed CDBG funds for the Centre Park Historic District signage installation activity **(Com Dev)**

**B. Resolution** - authorizing the mayor to execute a PY2013 CDBG Action Plan amendment to use \$125,000 in unprogrammed CDBG funds for the Downtown Street Furniture Activity **(Com Dev)**

**C. Resolution** - authorizing offers of employment to the 19 probationary fire trainees, effective September 16, 2013 **(Fire)**

**D. Award of Contract** - for the Tree Care Project to Arbor Care/Rod Irwin Land Clearing, 701 Candy Road, Mohnton, PA 19540 who is the sole bidder with total bid price of \$27,120.00. **(Pub Works/Purchasing)**

#### **6. ADMINISTRATIVE REPORT**

#### **7. REPORT FROM OFFICE OF THE AUDITOR**

#### **8. REPORT FROM DEPT. DIRECTORS, BOARDS, AUTHORITIES, & COMMISSIONS**

#### **9. ORDINANCES FOR FINAL PASSAGE**

**None**

## **10. INTRODUCTION OF NEW ORDINANCES**

**A. Ordinance** – amending the City’s Code by adding a new chapter regarding regulations for the permitting and inspection of tattoo and piercing establishments **(Board of Health)**  
*Advertised 9-15-13*

**B. Ordinance** – amending the City’s Code to add a Tattoo Establishment Inspection Fee \$100 and an application fee of \$50 **(Board of Health)** *Advertised 9-15-13*

**C. Ordinance** – authorizing the execution of a tri-party lease agreement between the City of Reading, the Berks County Conservancy and Alvernia University; a lease agreement between the City of Reading and Alvernia University and a lease agreement between the City of Reading and the Berks County Conservancy to provide for the leasing of certain portions of Angelica Park, as more specifically identified in exhibit “A”. **(Law)**

## **11. RESOLUTIONS**

**A. Resolution** – reappointing Lynn Smith to the Animal Control Board **(Nom & Appts)**

**B. Resolution** – reappointing Jeff Darlington to the Board of Ethics **(Nom & Appts)**

**C. Resolution** – reappointing Brian Fichthorn to the Main Street Board **(Nom & Appts)**

**D. Resolution** – reappointing Pamela Cianciosi to the Citizens Advisory Board **(Nom & Appts)**

**E. Resolution** – appointing Craig Breneiser to the Fire Civil Service Board **(Nom & Appts)**

**F. Resolution** – making Jared Barcz a full member of the Zoning Hearing Board **(Nom & Appts)**

## **12. PUBLIC COMMENT – GENERAL MATTERS**

*Please see public speaking rules on first page*

## **13. COUNCIL BUSINESS / COMMENTS**

## **14. COUNCIL MEETING SCHEDULE**

### **Monday, September 9**

*Nominations & Appointments Committee – Council Office – 4 pm*

*Committee of the Whole – Council Office – 5 pm*

*Regular Meeting – Council Chambers – 7 pm*

### **Monday, September 16**

*Finance Committee – Council Office – 5 pm*

*Strategic Planning Committee – Council Office – immediately following Finance Committee*

**Monday, September 23**

*Committee of the Whole – Council Office – 5 pm*

*Regular Meeting – Council Chambers – 7 p*

**15. BAC AND COMMUNITY GROUP MEETING SCHEDULE**

**Monday, September 9**

Fire Civil Service – Penn Room – 4 pm

Shade Tree Commission – Planning Conference Room – 6 pm

6<sup>th</sup> & Amity Neighborhood & Playground Assn – 6<sup>th</sup> & Amity Fieldhouse

**Tuesday, September 10**

Water Authority Workshop – Water Authority Office – 4 pm

District 11 Crime Watch – Orthodox Presbyterian Church – 7 pm

**Wednesday, September 11**

Zoning Hearing Board – Council Chambers – 5:30 pm

Center City Community Organization – Holy Cross Church – 6 pm

**Thursday, September 12**

Police Pension Board – Penn Room – 10 am

Outlet Area Neighborhood Assn – St Mark's Lutheran Church – 6:30 pm

**Monday, September 16**

Library Board – 113 S 4<sup>th</sup> St – 4 pm

**Tuesday, September 17**

HARB – Planning Conference Room – 7 pm

Charter Board – Penn Room – 7 pm

**Wednesday, September 18**

Redevelopment Authority – Redevelopment Authority Office – 6:30 pm

**Thursday, September 19**

Blighted Property Review Committee – Council Chambers – 6 pm

**Monday, September 23**

DID Authority – 645 Penn St 5<sup>th</sup> floor - noon

**City of Reading City Council  
Regular Business Meeting  
Monday, August 26, 2013**

Council President Francis G. Acosta called the meeting to order.

The invocation was given by Pastor Quentin Wallace, St. Matthew United Methodist.

All present pledged to the flag.

**ATTENDANCE**

Council President Acosta  
Councilor Corcoran, District 1  
Councilor Goodman-Hinnershitz, District 2  
Councilor Sterner, District 3  
Councilor Marmarou, District 4  
Councilor Reed, District 5  
Councilor Waltman, District 6  
City Auditor D. Cituk  
City Solicitor C. Younger  
City Clerk L. Kelleher  
Managing Director C. Snyder  
Mayor V. Spencer

**PROCLAMATIONS AND PRESENTATIONS**

None.

**PUBLIC COMMENT**

Council President Acosta announced that three (3) citizens were registered to address Council; two(2) on agenda matters and one (1) on non-agenda matters. He inquired if any Councilor objected to suspending the rule requiring non-agenda comment at the end of the Council meeting. As no one objected, the rule to require non-agenda comment at the end of the meeting was suspended. Council President Acosta reminded the citizens registered to speak about the remaining public speaking rules.

**Roger Stief Jr.**, declined the opportunity to speak when called to the podium.

**Rich Kasprzewski, of South 15<sup>th</sup> Street**, asked Council to further explore the transfer of two (2) Streets division employees to Solid Waste/Recycling before approving the ordinance on tonight's agenda. He stated that the staff reduction in Streets several years ago has hampered

the division's ability to perform quality service to Reading residents. He stated this reduction in staff will further impeded the division's ability to plow snow, remove leaves, pick up storm debris, etc. He suggested that if Solid Waste/Recycling is flush with money they should hire new employees rather than further strip employees from the Streets division. He stated that diverting employees to handle trash and recycling collection will hamper the ability of the Street's division to handle their current workload.

**Brenda Clay, of North 2<sup>nd</sup> St,** was not present.

## **APPROVAL OF THE AGENDA & MINUTES**

Council President Acosta called Council's attention to the agenda for this meeting, including the legislation listed under the Consent Agenda heading, and the minutes for the July 22<sup>nd</sup> and August 12<sup>th</sup> Regular Meetings of Council. He announced the need to remove Resolution D regarding Our City Reading from the agenda as further information is needed.

**Councilor Marmarou moved, seconded by Councilor Sterner, to approve the minutes from the July 22<sup>nd</sup> and August 12<sup>th</sup> Regular Meetings of Council and the agenda as amended, including the legislation under the Consent Agenda heading. The motion was approved unanimously.**

## **Consent Agenda**

**A. Resolution 63-2013** – to authorize a Sewage Plan Revision for Kutz Factory LP's Kutztown Road Retail, on William Road, as the proposed connection does comply with the allocations and other aspects of the provision of Chapter 94 of State Statutes. **(Bus Analyst/Utilities)**

**B. Resolution 64-2013** – to authorize the disposition of digital data and electronic transaction records created, obtained or derived prior to January 1, 2007 for the Department of Administrative Services, as per Records Retention Policy and Document Retention Schedule **(Bus Analyst)**

**C. Award of Contract** – for the Angelica Creek Bridge Remediation to Professional Construction Contractors, Inc., 4220 Myriah Court, Bethlehem, PA who is the low bidder with total bid price of \$206,959.00 **(Purchasing/Pub Works)**

## **ADMINISTRATIVE REPORT**

Mayor Spencer read the report distributed to Council at the meeting. In summary:

- Attended a meeting with the Reading School District about school safety
- Attended the press conferences regarding the announcement of Reading's designation as a Main Street City
- Attended the Gilmore-Henne event at Barbey's playground
- Attended the Mayor's Against Guns meeting

## AUDITOR'S REPORT

City Auditor Cituk read the report distributed to Council at the meeting covering the following:

- 2013 Admissions Tax collection
- 2013 PILOT collection

## REPORT FROM DEPT. DIRECTORS, BOARDS, AUTHORITIES, & COMMISSIONS

None.

## ORDINANCES FOR FINAL PASSAGE

**A. Bill No. 35-2013** - approving, adopting and enacting substantive changes to the existing city ordinances in conjunction with the adoption of the Code of the City of Reading (**City Clerk/Law**) *Advertised July 1<sup>st</sup> and August 19<sup>th</sup>*

**Councilor Marmarou moved, seconded by Councilor Goodman-Hinnershitz, to enact Bill No. 35-2013.**

Council President Acosta explained that Bill Nos. 35 and 36 pertain to the recodification of the City's ordinances.

**Bill No. 35-2013 was enacted by the following vote:**

**Yeas: Corcoran, Goodman-Hinnershitz, Marmarou, Reed, Sterner, Waltman, Acosta,**  
**President - 7**  
**Nays: None - 0**

**B. Bill No. 36-2013** - approving the codification of a complete body of legislation for the City of Reading, County of Berks, Commonwealth of Pennsylvania, as revised, codified and consolidated into titles, chapters and sections by General Code, and consisting of Chapters 1 through 600, together with an Appendix, are hereby approved, adopted, ordained and enacted as a single ordinance of the City of Reading, which shall be known and is hereby designated as the "Code of the City of Reading," hereinafter referred to as the "Code." (**City Clerk/Law**) *Advertised July 1<sup>st</sup> and August 19<sup>th</sup>*

**Councilor Sterner moved, seconded by Councilor Corcoran, to enact Bill No. 36-2013.**

**Bill No. 36-2013 was enacted by the following vote:**

**Yeas: Corcoran, Goodman-Hinnershitz, Marmarou, Reed, Sterner, Waltman, Acosta,**  
**President - 7**  
**Nays: None - 0**

**C. Bill No. 37-2013** – amending the 2013 Position Ordinance by transferring two Equipment Operator II positions in the Streets Division of the Department of Public Works to the Solid Waste and Recycling Division of the Department of Public Works. **(Bus Analyst)**

**Councilor Sterner moved, seconded by Councilor Corcoran, to enact Bill No. 37-2013.**

The Managing Director explained that these two (2) positions are currently funded by Solid Waste/Recycling and the transfer simply moves them into the area that pays the employees. She stated that the duties of the employees will remain the same and that the transfer will merely increase the flexibility of staff and the department.

**Bill No. 37-2013 was enacted by the following vote:**

**Yeas: Corcoran, Goodman-Hinnershitz, Marmarou, Sterner, Waltman, Acosta,**

**President - 6**

**Nays: Reed - 1**

**D. Bill No. 39-2013** – authorizing the execution of the Intergovernmental Cooperation Agreement between the City and the Reading School District for the recycling collection service as well as any and all other required documents to facilitate and effectuate said recycling collection service. **(Law)**

**Councilor Marmarou moved, seconded by Councilor Corcoran, to enact Bill No. 39-2013.**

Councilor Goodman-Hinnershitz thanked the Administration and School District for working cooperatively to bring recycling into the District's operations. She suggested extending on this cooperation into other areas and services.

**Bill No. 39-2013 was adopted by the following vote:**

**Yeas: Corcoran, Goodman-Hinnershitz, Marmarou, Reed, Sterner, Waltman, Acosta,**

**President - 7**

**Nays: None - 0**

**E. Bill No. 40-2013** – vacating a portion of Moss Street, as described in Exhibit A and removing this portion of Moss St from the City's topographical map **(Law)** (PAGE 84) *Introduced at the 6-24 regular meeting; Required post enactment advertisement scheduled for September 2<sup>nd</sup>, 9<sup>th</sup> and 16<sup>th</sup>*

**Councilor Corcoran moved, seconded by Councilor Reed, to enact Bill No. 40-2013.**

**Bill No. 40-2013 was adopted by the following vote:**

**Yeas: Corcoran, Goodman-Hinnershitz, Marmarou, Reed, Sterner, Waltman, Acosta,**

**President - 7**



**Nays: None - 0**

## **INTRODUCTION OF NEW ORDINANCES**

None.

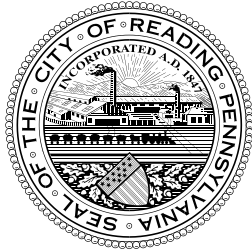
## **RESOLUTIONS**

None.

Council President Acosta reviewed the upcoming meeting schedule.

**Councilor Sterner moved, seconded by Councilor Reed, to adjourn the regular meeting of Council.**

*Respectfully submitted by Linda A. Kelleher CMC, City Clerk*



## **AGENDA MEMO**

### **COMMUNITY DEVELOPMENT**

**TO:** CITY COUNCIL  
**FROM:** LENIN AGUDO, COMMUNITY DEVELOPMENT DEPARTMENT DIRECTOR  
**MEETING DATE:** **April 22, 2013**  
**AGENDA MEMO DATE:** JANUARY 28, 2013  
**REQUESTED ACTION:** TO APPROVE AN AMENDMENT TO THE PY2006  
(32ND CD YEAR JANUARY 1, 2006 TO DECEMBER 31, 2006)  
CDBG ACTION PLAN

The Community Development Department is asking City Council to pass the resolution at the **April 22, 2013** City Council meeting.

**BACKGROUND:** The Berks County Redevelopment Authority's (BCRA) demolition program involves demolishing vacant buildings in the City using the County of Berks affordable housing funds. Those affordable housing funds come from the real estate title transfer tax.

In 2006, the BCRA requested and was granted City CDBG funds for the program. The BCRA entered into an CDBG Agreement with the City to demolish vacant buildings and to create low mod housing. The buildings were demolished in 2006 and 2007. \$198,463.42 was spent on the activity.

In November of 2012 the Philadelphia HUD CPD Office (HUD) asked the City's Community Development Department (CD) to close out old CDBG activities in HUD's IDIS computer system. One of those old activities was the BCRA's demolition program.

Upon consultation with CD, BCRA has requested changing the activity's CDBG National Objective designation in the HUD IDIS computer system from "low mod housing" to "the removal of slum and blight on a spot basis".

HUD has instructed CD to prepare an PY2006 Action Plan Amendment giving citizens an opportunity to comment on the change to the activity's CDBG National Objective designation. Amending a CDBG Action Plan is standard procedure when changing an existing CDBG activity's National Objective designation.

CD is amenable to granting BCRA's request because the change of the National Objective is solely a procedural matter and no additional CDBG funds are required for the completion of the activity. In addition, the National Objective change will permit CD to immediately close an old activity in the HUD IDIS computer system to the satisfaction of the HUD.

**BUDGETARY IMPACT:** None.

**PREVIOUS ACTION:** None.

**SUBSEQUENT ACTION:** None.

**RECOMMENDED BY:** The Community Development Director, Managing Director, and Mayor.

**RECOMMENDED MOTION:** To approve/deny a Council Resolution authorizing the Mayor to execute a PY2006 (32nd CD year - January 1, 2006 to December 31, 2006) CDBG Action Plan Amendment to change the Berks County Redevelopment Authority's demolition of deteriorated buildings activity's National Objective from low- and moderate-income housing to removal of slum and blight on a spot basis.

Cc: Carole Snyder  
Neil Nemeth

**RESOLUTION OF THE COUNCIL OF THE CITY OF READING  
AUTHORIZING THE MAYOR TO EXECUTE A  
PY2006 CDBG ACTION PLAN AMENDMENT**

WHEREAS, under 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) outlines the consolidated submissions for community planning and development programs which will serve as: (1) a planning document for the City that builds on a participatory process at the grass roots level, (2) an application for federal funds under HUD's formula grant program, (3) a strategy to be followed in carrying out HUD programs, and (4) an Action Plan that provides a basis for assessing performance;

WHEREAS, the PY2006 (32nd CD year - January 1, 2006 to December 31, 2006) CDBG Action Plan has been prepared meeting HUD's requirements and providing guidance for addressing the housing and community development needs of the City;

WHEREAS, the Berks County Redevelopment Authority has utilized PY2006 CDBG funds to demolish deteriorated structures in the City and wishes to change the activity's CDBG National Objective from low- and moderate-income housing 24 CFR 570.208(a)(3) to removal of slum and blight on a spot basis 24 CFR 570.208(b)(2);

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF READING THAT:

The Mayor is authorized to execute a PY2006 (32nd CD year - January 1, 2006 to December 31, 2006) CDBG Action Plan Amendment to change the Berks County Redevelopment Authority's demolition of deteriorated buildings activity's National Objective from low- and moderate-income housing 24 CFR 570.208(a)(3) to removal of slum and blight on a spot basis 24 CFR 570.208(b)(2).

The amendment will also result in the City's 2006 overall low- and moderate-income benefit percentage to be 88.23% and the 2007 overall low- and moderate-income benefit to be 78.30%.

The Mayor, on behalf of the City of Reading, is authorized and directed to execute the amendment to the satisfaction of HUD.

Adopted by Council on \_\_\_\_\_, 2013

\_\_\_\_\_  
Vice President of Council

ATTEST:

\_\_\_\_\_  
City Clerk



**AGENDA MEMO**  
**COMMUNITY DEVELOPMENT**

**TO:** CITY COUNCIL  
**FROM:** LENIN AGUDO, COMMUNITY DEVELOPMENT DEPARTMENT DIRECTOR  
**MEETING DATE:** SEPTEMBER 9, 2013  
**AGENDA MEMO DATE:** JULY 30, 2013  
**REQUESTED ACTION:** TO APPROVE AN AMENDMENT TO THE PY2013  
(39TH CD YEAR JANUARY 1, 2013 TO DECEMBER 31, 2013) CDBG  
ACTION PLAN  
FOR THE DOWNTOWN STREET FURNITURE ACTIVITY

The Community Development Department is asking City Council to pass the resolution at the **September 9, 2013** City Council meeting.

**BACKGROUND:** The City's Public Works Department wishes to purchase and install street furniture (benches, planters, trash and recycling receptacles, etc.) in the downtown (200 to 600 blocks of Penn Street) and in the Main Street area.

**BUDGETARY IMPACT:** None.

**PREVIOUS ACTION:** None.

**SUBSEQUENT ACTION:** None.

**RECOMMENDED BY:** Director of Public Works, Managing Director, and Mayor.

**RECOMMENDED MOTION:** To approve/deny a Council Resolution authorizing the Mayor to execute a PY2013 (39th CD year - January 1, 2013 to December 31, 2013) CDBG Action Plan Amendment to program \$125,000.00 in unprogrammed CDBG funds for the Downtown Street Furniture activity. The activity's eligibility / fundability is public facilities and improvements 24CFR570.201(c) / low mod area 24CFR570.208 (a) (1). The activity's service area contains 88.7% low mod persons.

Attachment

Cc: Carole Snyder  
David Kersley  
Charlie Jones  
Crystal Edwards  
Neil Nemeth  
Brenda Skimski

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE COUNCIL OF THE CITY OF READING  
AUTHORIZING THE MAYOR TO EXECUTE A  
PY2013 CDBG ACTION PLAN AMENDMENT

WHEREAS, under 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) outlines the consolidated submissions for community planning and development programs which will serve as: (1) a planning document for the City that builds on a participatory process at the grass roots level, (2) an application for federal funds under HUD's formula grant program, (3) a strategy to be followed in carrying out HUD programs, and (4) an Action Plan that provides a basis for assessing performance;

WHEREAS, the PY2013 (39th CD year - January 1, 2013 to December 31, 2013) CDBG Action Plan has been prepared meeting HUD's requirements and providing guidance for addressing the housing and community development needs of the City;

WHEREAS, the Department of Public Works would like to utilize CDBG funds to purchase and install street furniture (benches, planters, trash and recycling receptacles, etc.) in the downtown and the Main Street area;

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF READING THAT:

The Mayor is authorized to execute a PY2013 (39th CD year - January 1, 2013 to December 31, 2013) CDBG Action Plan Amendment. The amendment will program \$125,000 in unprogrammed CDBG funds for the Downtown Street Furniture activity. The activity's eligibility / fundability is public facilities and improvements 24CFR570.201(c) / low mod area 24CFR570.208 (a) (1). The activity's service area contains 88.7% low mod persons.

The Mayor, on behalf of the City of Reading, is authorized and directed to execute the amendment to the satisfaction of HUD.

ADOPTED BY COUNCIL \_\_\_\_\_, 2013

\_\_\_\_\_  
VICE PRESIDENT OF COUNCIL

ATTEST:

\_\_\_\_\_  
CITY CLERK

## RESOLUTION NO. \_\_\_\_\_ 2013

### THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

Authorizing offers of employment to the following probationary fire trainees, effective September 16, 2013:

- Justin Auker
- Matthew Azrolan
- Kenneth P Brooke, Jr
- Timothy Conti
- Marc Devita
- Matthew R Grant
- Pattrick Griffin
- Jeremy Grove
- Michael Harcarik
- Dev Kannan
- Ryan Kery
- Kenneth Robert Kise
- Nathan MacLane
- Andrew McIntyre
- Benjamin W Miller
- Matthew R Schneck
- Jeffrey Schrack
- Craig Sweigart
- Charles J Zadroga

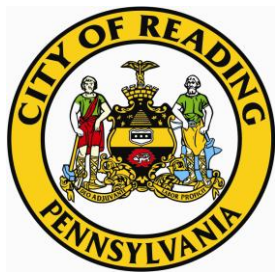
The department's offer of employment is conditional on successfully completing fire training.

Adopted by Council \_\_\_\_\_, 2013

\_\_\_\_\_  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher CMC  
City Clerk



# AGENDA MEMO

## DEPARTMENT OF ADMINISTRATIVE SERVICES

**TO:** City Council  
**FROM:** Tammi Reinhart, Purchasing Coordinator  
**PREPARED BY:** Tammi Reinhart, Purchasing Coordinator  
**MEETING DATE:** September 9, 2013  
**AGENDA MEMO DATE:** September 4, 2013  
**RECOMMENDED ACTION:** Awarding of Contract for the Tree Care Project for the Shade Tree Commission

### RECOMMENDATION

**The recommendation is to award the contract for the Tree Care Project to Arbor Care/Rod Irwin Land Clearing, 701 Candy Road, Mohnton, PA 19540 who is the sole bidder with total bid price of \$27,120.00.**

### BACKGROUND

Bids for this project were received on July 31, 2013.

The project includes all street trees located on and between the outlined areas below. The trees are to be pruned for elevation, clearance, line of sight, structure, health, etc.

Northern boundary: Buttonwood Street

Southern boundary: Chestnut Street

Western boundary: 2<sup>nd</sup> Street

Eastern boundary: 11<sup>th</sup> Street

A copy of the Schedule of Bids is attached for your review.

### BUDGETARY IMPACT

The Department of Public Works/Shade Tree Commission has confirmed there are sufficient funds in budget account code 20-07-02-4216 to cover the project.

### PREVIOUS ACTION

None



## **SUBSEQUENT ACTION**

**Formal action by Council is required to award the contract at the September 9, 2013 meeting.**

## **RECOMMENDED BY**

Mayor, Managing Director, Director of Administrative Services, Director of Public Works, Operations Division Manager Controller and Purchasing Coordinator.

August 21, 2013

To the Mayor  
City Hall  
Reading, PA

The following bids were opened and scheduled, with a Contract to be awarded or the bids rejected.

## **BID NO. 2013-22 FOR THE TREE CARE PROJECT, SHADE TREE COMMISSION, DEPARTMENT OF PUBLIC WORKS**

### **BIDDER**

### **PRICE**

Rod Irwin Land Clearing  
701 Candy Road  
Mohnton, PA 19540

\$27,120.00

TAMMI REINHART  
Purchasing Coordinator



## CITY OF READING CITY COUNCIL

### Brief

|                      |                    |              |   |
|----------------------|--------------------|--------------|---|
| <b>Item:</b>         | Tattoo Regulations | <b>From:</b> | Shelly Katzenmoyer<br>Deputy City Clerk |
| <b>Briefing No.:</b> | 1-2013             | <b>Date:</b> | August 29, 2013                         |

**SUBJECT:** Establishment of Tattoo Regulations, Inspections, and Permits

**BACKGROUND:** The Board of Health began discussing this topic on July 7, 2010 after Property Maintenance Division Manager Natale made a visit to Lancaster, PA. During the visit, he learned that the City of Lancaster regulates and inspects tattoo establishments. He was given a copy of their regulations.

Mr. Natale brought this issue before the Board of Health for their assistance in adapting the Lancaster regulations to meet Reading's needs. He stated that this would assist the City by closing down the unpermitted establishments, regulating sanitary conditions, decreasing the number of tattoos being performed by untrained individuals in private homes, and underage tattoos.

**PROGRESS REPORT:** At the time this issue was brought forward, the Board of Health did not have a full complement of active members and began having problems reaching a quorum. In addition, City legal staff and City Council staff underwent several transitions slowing this process. However, in November 2012, the Board had two physician members committed to the Board and they began reviewing the regulations in earnest. In addition, several new members have been named to the Board and a quorum is now regularly reached.

During the review process, the Board worked with several members of the Property Maintenance Division, Legal Specialist Coleman, and Deputy City Clerk Katzenmoyer.

City tattoo establishments were provided a copy of the draft regulations in January 2013 and representatives were invited to attend the Board's February meeting to make comments and suggestions. We were pleased that representatives from all establishments were present and

that there was open and productive discussion. Many of the comments and suggestions made by the professionals were integrated into the regulations. These representatives also attended the March meeting to conclude these discussions.

The Board then put the finishing touches on the regulations and they were distributed to the tattoo establishments again in July. No comments were received and the Board interprets this as good news. The Board recommends that the regulations be considered and enacted by Council at this time.

In addition to the regulations, the Board suggests adding a fee for the permitting and inspection process.

### **ORDINANCE \_\_\_\_\_ - 2013**

#### **AN ORDINANCE OF THE CITY OF READING AMENDING THE CODIFIED ORDINANCES BY ADDING A NEW SECTION REGARDING REGULATIONS FOR THE PERMITTING AND INSPECTION OF TATTOO AND PIERCING ESTABLISHMENTS**

#### **THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. The Codified Ordinances of the City of Reading is hereby amended to add a new Section regarding regulations for the permitting and inspection of tattoo and piercing establishments of the City of Reading as attached as Exhibit A.

SECTION 2: All relevant ordinances, regulations and policies of the City of Reading, Pennsylvania not amended per the attached shall remain in full force and effect.

SECTION 3: If any section, subsection, sentence or clause of this ordinance is held for any reason to be invalid such decision shall not affect the validity of the remaining portions of the Ordinance.

Section 4: This Ordinance shall become effective in ten (10) days in accordance with Charter Section 219 after passage.

Enacted \_\_\_\_\_, 2013

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Council President

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

## **TATTOO AND PIERCING ESTABLISHMENTS**

**§ 10-2201. TITLE.** This chapter shall be known and may be cited as “The City of Reading Tattoo and Body Piercing Ordinance.”

**§ 10-2202. PURPOSE.** The purpose of this chapter is to protect the public health, safety and general welfare by regulating individuals and establishments providing tattooing and body piercing services and by providing a uniform set of guidelines for the provision of those services and the operation of those establishments.

**§ 10-2203. WORD USAGE AND DEFINITIONS.** In the administration of this chapter, words in the present tense include the future, the singular number includes the plural and the plural the singular; the masculine includes the feminine; the words “shall” and “will” are mandatory; and the word “may” is permissive.

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

**AFTERCARE.** Written and verbal instructions given to the client, specific to the body art procedure(s) rendered, on caring for the body art and its surrounding area.

**ANTISEPTIC.** An agent that destroys disease-causing microorganisms on human skin or mucosa.

**APPRENTICE.** An individual being taught a trade.

**ARTIST/OPERATOR/TECHNICIAN/PRACTITIONER.** Any person who controls, operates, manages, conducts or practices body art activities at a body art establishment. The term includes technicians and apprentices who work under the operator and perform body art activities.

**AUTOCLAVE.** An apparatus for sterilization, utilizing steam pressure at a specific temperature over a period of time.

**BLOODBORNE PATHOGENS.** Standard OSHA Guidelines as defined in 29 CFR 1910.103, "Occupational Exposure to Bloodborne Pathogens."

**BODY ART.** The practice of body piercing and tattooing.

**BODY ART ESTABLISHMENT OR FACILITY.** Any space where body piercing or tattooing is conducted.

**BODY PIERCING.** The perforation of human tissue, excluding ear piercing, for a nonmedical purpose.

**CLIENT.** A person who requests a body art procedure at a body art establishment.

**CLIENT RECORD.** A file kept by the establishment maintaining information regarding the client and the body art procedures provided to the client.

**CONTAMINATED WASTE/BIOLOGICAL WASTE/BIOHAZARD WASTE.** Any liquid or semiliquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semiliquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030 (latest edition), known as "Occupational Exposure to Bloodborne Pathogens" and/or 105 CMR 480.000 "Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste."

**COSMETIC TATTOOING (SEE TATTOOING).** Permanent cosmetics and/or micropigment implantation.

**DEPARTMENT.** City of Reading Property Maintenance Division

**DISINFECTION.** The destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

**EAR PIERCING.** The puncturing of the outer perimeter or lobe of the ear using a presterilized single-use stud and clasp ear piercing system following manufacturers' instructions.

**EQUIPMENT/FURNITURE.** All machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

**EXPOSURE.** Any event where there is an eye, mouth or other mucus membrane or nonintact skin

contact with the blood or body fluids of another person or contact of eye, mouth or other mucus membrane, nonintact skin with other potentially infectious matter and/or an occurrence whereby an individual is exposed to medical waste.

**GAUGING.** The deliberate expansion of a healed fistula (hole in the skin) for the purpose of wearing body piercing jewelry.

**GLOVES.** Disposable protective coverings for the hands.

**HANDSINK.** A lavatory equipped with tempered hot and cold running water under pressure, used solely for washing hands, arms or other portions of the body.

**HEALTH OFFICER.** The Health Officer of the City of Reading or his or her designee.

**HEALTH PERMIT.** The written authorization by the City of Reading to operate a body art establishment and/or to provide body art services. This permit is separate from any other licensing requirement that may exist within communities or political subdivisions other than the City of Reading.

**HOT WATER.** Water at a temperature greater than or equal to 110° F. but not greater than 125° F.

**INFECTIOUS WASTE.**

- A. Blood and body fluids in a liquid or semi liquid state;
- B. Items contaminated with blood or body fluids, which, if compressed or disturbed, may release liquid or semi liquid blood or body fluids;
- C. Sharps which have been used in performing body art;
- D. Other waste which contains pathogenic microbial agents or other biologically active materials in sufficient concentrations that exposure to the waste directly or indirectly creates a significant risk of disease.

**INSTRUMENTS USED FOR BODY ART.** Hand pieces, needles, sharps, needle bars and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during body art procedures.

**INVASIVE.** Entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

**JEWELRY.** Any personal ornament inserted into a newly pierced area.

**LIQUID CHEMICAL GERMICIDE.** A sanitizer registered with the Environmental Protection Agency or an approximate 1:100 dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle (500 ppm, 1/4 cup per gallon or two tablespoons per quart of tap water).

**MEDICAL WASTE.**

- A. Blood and body fluids in a liquid or semiliquid state;
- B. Items contaminated with blood or body fluids, which, if compressed or disturbed, may release liquid or semiliquid blood or body fluids;

- c. Sharps which have been used in performing body art;
- d. Other waste which contains pathogenic microbial agents or other biologically active materials in sufficient concentrations that exposure to the waste directly or indirectly creates a significant risk of disease.

**MINOR.** Any individual under the age of 18.

**OPERATOR.** The term “operator” shall mean

- A. Any individual, firm, company, corporation, or association that owns or operates an establishment where tattooing is performed
- B. Any individual who performs or practices the art of tattooing on a human being.

This definition shall not apply to

1. Licensed physicians, dentists, or doctors of veterinary medicine in performance of their professional duties
2. Funeral directors
3. Corrective cosmetics establishments physically located within a licensed physician’s office.

**PERMIT HOLDER.** A person who holds a permit to operate a body art establishment or to provide body art services.

**PERSON.** An individual, any form of business or social organization or any other nongovernmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or unincorporated organization.

**PHYSICIAN.** A health professional who has earned a degree of Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) after completing an approved course of study. A physician is required to obtain a license from the state in which professional services will be performed.

**PIERCING.** The term piercing refers to piercing of skin with insertion of a device. Individuals who pierce only ear lobes are exempt from the regulations.

**PROCEDURE SURFACE.** Any surface of an inanimate object that contacts the client’s skin during a body art procedure, skin preparation of the area adjacent to and including the body art procedure or any associated work area, which may require sanitizing.

**RECORD/REGISTER.** List.

**SANITARY.** Clean and free of agents of infection or disease.

**SANITIZE/SANITIZATION PROCEDURE.** A process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by the Property Maintenance Division and/or by the Center for Disease Control and Prevention.

**SHARPS.** Any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, presterilized, single-use needles, scalpel blades and razor blades.

**SHARPS CONTAINER/BIOHAZARD CONTAINER.** A puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the international biohazard symbol.

**SINGLE USE.** Products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and gloves.

**STERILIZATION.** A process approved by the Property Maintenance Division resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

**TATTOO.** The indelible mark, figure, or decorative design introduced by the insertion of dyes or pigments into or under the subcutaneous portion of the skin.

**TATTOOING.** The term tattooing refers to one or more of the following:

- A. Any method of placing indelible mark(s), figure(s), letter(s), scroll(s), symbol(s), or decorative design(s) upon or under the skin of a living human being with ink or any other substance, resulting in the coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin.
- B. An indelible design made upon the skin of a living human being by production of scars other than by branding.
- C. All forms of cosmetic tattooing.

**TATTOO ESTABLISHMENT.** A place where tattooing is performed.

**TATTOOIST.** Any person who applies a tattoo to the body of another person.

**TEMPORARY BODY ART ESTABLISHMENT.** Any place or premise operating at a fixed location where an operator performs body art procedures for no more than 14 days consecutively in conjunction with a single event or celebration.

**THREE DIMENSIONAL BODY ART.** The form of body art consisting of or requiring the placement, injection or insertion of an object, device or other thing made of material such as steel, titanium, rubber, latex, plastic, glass or any other material, beneath the surface of the skin of a person.

**UNIVERSAL PRECAUTIONS.** A set of guidelines and controls, published by the Center for Disease Control and Prevention (CDC) as ‘guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers’ in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as ‘recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures’, in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.



**WAIVER.** A written document issued by the Health Officer with the consent of the Board which authorizes a modification or waiver of one or more of the requirements of this chapter if, in the opinion of the Health Officer and Property Maintenance Division, a health hazard or nuisance will not result from the modification or waiver.

**§ 2204. HEALTH PERMIT.**

**A.** It shall be unlawful for any person to engage in the business of operating a tattoo establishment performing body art, body piercing, or tattooing without first obtaining a permit to engage in such business, in accordance with the provisions of this ordinance and unless abiding by the provisions hereof. A permit application may be refused and an establishment may be closed summarily by a Health Officer or his designee.

**B. HEALTH PERMIT APPLICATIONS.**

**1.** Any person wishing to obtain a permit pursuant to the provisions of this chapter for said establishment (whether initially or for renewal thereof) shall submit the following information to the Department:

- a. name of the body art establishment;
- b. address and phone number of the body art establishment;  
name, address and phone number of the owner of the establishment
- c. for each employee of the establishment:
  - i. full name;
  - ii. home address;
  - iii. home phone number;
  - iv. certificate of completion of OSHA bloodborne pathogens training dated no more than one (1) year prior to date of permit application;
- d. proof of liability insurance with a \$150,000 minimum;
- e. phone number of the establishment;
- f. method of sterilization to be utilized at the establishment;
- g. a description of all body art procedures performed at the establishment;
- h. proof of payment of current fiscal year's applicable occupational and business privilege taxes; and
- i. proof that the applicant is at least 18 years of age.

**2.** Any person wishing to obtain a permit pursuant to the provisions of this chapter must be an owner, operator, manager, or corporate officer of the business itself, not merely of the physical structure in which the business is located.

**C. FEE / EXPIRATION.**

Fees are set by City Council and are as listed in the City of Reading Codified Ordinances, Fee Schedule.

**D. TRANSFERABILITY.**

1. The health permit is non-transferrable. It may not under any circumstances be transferred to another individual and/or address. A new health permit must be sought in such a circumstance.

**§ 2205. DOCUMENTS REQUIRED TO BE POSTED.** The following must be displayed in a prominent and conspicuous area readily observable to patrons:

- A. Permit provided for in this ordinance
- B. Most current inspection sheet
- C. Literature explaining aftercare
- D. Name, address, and phone number of Property Maintenance Division/Health Office
- E. Emergency plan for contacting fire, police, or emergency services and a phone readily available for such use
- F. Plan for exiting the premises in case of a fire or disaster
- G. Zoning permit

**§ 2206. INSPECTIONS.** When application for permit is complete, the applicant shall be referred to the Property Maintenance Division. The Property Maintenance Division shall inspect the proposed location to determine if it complies with the health and sanitary provisions of this ordinance. Inspections must occur at least twice per year and can be unannounced. It shall be unlawful for any person or operator of a tattooing establishment to willfully prevent or restrain the Health Officer or his designee from entering any permit-issued establishment where tattooing is being performed for the purpose of inspecting said premises after proper identification is presented to the operator. The Health Officer or his designee may give written warning for violations and if establishment does not correct the deficiency within 10 days the establishment shall be closed until compliance is achieved.

**§ 2207. REGULATIONS FOR ESTABLISHMENTS AND OPERATORS.** Every person who operates a tattooing establishment within the City of Reading shall comply with the following requirements:

**A. RECORDS REQUIRED.**

1. In order for the operator to properly assess the client's condition for receiving body art procedures and not violate the client's rights or confidential medical information, the operator must obtain a client record containing the following information regarding each client:
  - a. Name, address, date of birth and photocopy of ID (acceptable forms of ID are driver's license, passport, state ID or military ID)
  - b. Any known allergies;
  - c. Any condition that may affect/hamper the healing process;
  - d. The name of the artist who performed the procedure;
  - e. The date of the procedure;
  - f. The location of the procedure on the client's body;
  - g. A description of the type of procedure provided;
  - h. A description of any unusual circumstances or complications occurring during the procedure.
2. The following forms must be completed by each client and kept as part of the client record:
  - a. Signed statement by client acknowledging that he or she may be temporarily prohibited from donating blood under rules and regulations of the Red Cross;
  - b. Signed statement by client attesting that, at the time of the procedure, he or she is not intoxicated from legal or illegal drug use or alcohol consumption;
  - c. For all persons under the age of 18, signed consent of the minor's parent or legal guardian permitting the minor to undergo the body art procedure. (For anyone under the age of 18, a notarized affidavit and a copy of the parent/guardian ID is required);

3. The holder of a body art establishment permit must ensure that the foregoing client records are kept and retained for a minimum of four (4) years and shall be made available to the Health Officer or designee upon request.

4. All infections or complications resulting from body art performed by the establishment which become known to the establishment shall be recorded in the client file, and the details of the infection or complication must be promptly reported to the Property Maintenance Division.

**B. GENERAL PROVISIONS.** The holder of a body art establishment permit must ensure that the body art establishment conforms at all times with the following requirements:

1. The levels where body art procedures are being performed and where instruments and sharps are assembled shall be well-lit at all times with an artificial light source.
2. All walls, floors and procedure surfaces in rooms or areas where body art procedures are performed must be smooth, nonporous, washable, and in good repair. Floors shall be cleaned daily. Cleaning shall not occur while procedures are being performed.
3. All body art establishments must have a dedicated physical address.
4. All body art establishments must have:
  - a. An entrance leading directly into the establishment;
  - b. No direct opening between the establishment and any building or portion of a building used as living or sleeping quarters or as a food, liquor, or tobacco establishment; and
  - c. Notwithstanding the foregoing, body art establishments located in a nail salon, barbershop or cosmetology salon may share an entrance into the establishment. However, the body art portion of the establishment must be separated by a wall extending from floor to ceiling.
5. Each establishment shall have an area that will be screened from public view for customers requesting privacy or for all genitalia body art procedures. Dividers, curtains or partitions at a minimum shall separate multiple body art stations.
6. A consistent fresh air supply must be provided to the establishment. Furnace or air conditioners shall be maintained to allow for airflow. Filters shall be cleaned or replaced annually or more frequently if necessary.
7. No domestic or wild animals of any kind shall be present in a body art establishment; fish aquariums and service animals used by persons with disabilities are permitted in non-procedural areas.
8. The doors to the establishment shall be self-closing and kept closed to prevent entrance by vermin and foreign particles.
9. The establishment must at all times have a supply of hot and cold running water in sufficient quantities to conduct the facility in a sanitary manner.
10. The establishment must have emergency exits marked for easy escape.

11. Electrical appliances or apparatus must be clean and have no worn or bare wiring to avoid fires, shocks and electrocution and all electrical outlets in operator areas, cleaning areas and bathroom facilities must be equipped with ground fault (GF) protected receptacles.
12. Water or product spills on the floor shall be removed immediately and the floor dried to avoid falls.

C. **EQUIPMENT.** The establishment must have the following equipment, all of which shall be in good repair, easily cleanable and kept in a sanitary manner at all times:

1. **Sinks.** A minimum of two (2) sinks, one designated for hand washing and the other for employee use only to clean equipment. Both must be kept clean and include:

- a. Hot and cold running water, preferably with wrist or foot operated controls;
- b. Liquid pump soap;
- c. Single-use paper towels; and
- d. Waste receptacle.

2. **Sharps container.** Contaminated sharps must be disposed of in an approved sharps container to prevent cross-contamination.

3. **Biohazard waste container.** Biohazard waste must be disposed of in an approved biohazard waste container to prevent cross-contamination.

4. **Autoclave(s).** The autoclave shall be used, cleaned and maintained according to the manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Health Officer. Autoclaves shall be positioned away from workstations or areas available to the public. Cleaning and logbooks are to be available for inspection. Each owner of the body art establishment shall demonstrate that the autoclave is capable of attaining sterilization by monthly spore tests. These tests shall be verified through an independent laboratory. These records shall be kept by the owner for three years and made available to the Health Officer or his designee upon request. Each body art establishment is to be equipped with an autoclave which is a design, style or model that has received clearance by the U.S. Food and Drug Administration for conformance with section 510 (k) of the Federal Food, Drug and Cosmetic Act. Alternate sterilizing equipment may only be used when specifically approved in writing by the Property Maintenance Division. After each use and before use on another customer, all needle bars, grips and tubes and needles shall be processed by the following procedure: cleaned, packaged in a self-sealing autoclave bag which is dated with an expiration date not to exceed six months, and arranged in an autoclave which is operated in strict accordance with the manufacturer's recommendations. As the operation time of the autoclave may vary with the type of instrument, the packaging of that item and the arrangement of items in the autoclave, it is critical that the manufacturer's operation manual be followed. This will assure that each item placed in the autoclave achieves the proper temperature for sterilization. Temperature sensitive autoclave tape, autoclave bags with a chemical color indicator on the bag or any other temperature sensitive medium approved for autoclaves by the Property Maintenance Division must be applied to each load every time the autoclave is used. To further confirm that the autoclave is operated in a manner to assure sterility of the processed instruments, it must be tested monthly using a biological indicator such as spore strips or spore suspensions which are processed by a laboratory. The operator must maintain records documenting such testing for three years. A

copy of the manufacturer's recommended procedures for the operation of the autoclave is to be available for inspection by the Property Maintenance Division. An autoclave, which has received a positive spore test, must be immediately removed from service and all instruments allegedly sterilized by that autoclave shall not be utilized on any client. Prior to using, the operator must ensure that there is evidence of one negative spore test. If the autoclave requires repair work, it cannot be utilized until it has received two negative spore tests. Autoclaves must be cleaned and serviced at the frequency recommended by the manufacturer. A copy of the manufacturer's cleaning and servicing instructions must be maintained in the body art establishment.

5. **Waste receptacles.** Each workstation shall have a waste receptacle, which is covered and lined with a disposable bag.

6. **Disposable ink caps.** Ink caps are required if providing tattooing and permanent color technology procedures. Ink cap holders shall be smooth, nonporous and disposable.

7 **First aid kit.** Body art establishments are required to have a complete first aid kit.

8 **Chairs.** All chairs for operators, as well as clients, shall be made of smooth, cleanable materials. Cloth is not permitted.

9 **Cabinets or containers for storage.** All cabinets and containers shall be maintained and shall be kept in a clean and sanitary manner.

10. **Toilet facilities.** Toilet facilities shall be offered and conveniently located during all business hours for all operators, employees and clients. A hand wash sink shall be offered, and signage shall be visible reminding employees to wash their hands.

F. **SPECIAL REQUIREMENTS FOR SINGLE-USE ITEMS, INKS, DYES AND PIGMENTS**

1. All products applied to the skin, including but not limited to body art stencils, applicators, gauze, razors and markers, shall be considered single-use items.

2. Single-use items shall not be used on more than one client for any reason.

3. Single-use sharps shall be immediately disposed of in an approved sharps container.

4. Hollow bore needles or needles with cannula shall not be reused, whether on the same client or a different client, unless it is a single piercing.

5. All inks, dyes, pigments, solid core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to the manufacturer's instructions.

6. Inks, dyes, or pigments may be mixed and may only be diluted with water from an approved potable source.

7. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper or plastic cups or caps. Upon completion

of the tattoo, these single-use cups or caps and their contents shall be discarded.

8. The holder of the body art establishment permit shall maintain all the furniture and equipment in the establishment in good working order and keep it in a clean and sanitary manner.
9. The holder of the body art establishment permit must ensure that storage within the establishment and body artists comply with the following requirements:
  - a. Flammable and combustible chemicals shall be stored away from potential sources of ignition such as an open flame or an electrical device.
  - b. All chemicals shall be stored in closed bottles or containers and clearly labeled.
  - c. No cleaning/sterilizing products shall be stored:
    - [1] Where food is kept;
    - [2] In the rest room, unless in a locked cabinet; or
    - [3] With single-use supplies.
  - d. Storage units. All cabinets, drawers, and containers used for storage of supplies, instruments and towels shall be kept clean.
  - e. Supplies.
    - [1] Unused supplies shall be stored in a clean, enclosed container or drawer;
    - [2] Used/soiled disposable supplies shall be discarded immediately in a clean, closed waste receptacle with a plastic liner; and
    - [3] Shall be labeled accordingly.
  - f. Instrument storage.
    - [1] Instruments that have been used on a client or soiled in any manner shall be placed in a properly labeled covered receptacle until sterilized;
    - [2] Sterilized instruments shall be individually packed and stored in a clean, closed container or drawer until used and are to be stored six to 12 inches off the floor, dated with an expiration date not to exceed 180 days; and
    - [3] Sterile instruments may not be used if the package has been breached or after the expiration date without first resterilizing.
  - g. Contaminated sharps must be stored and disposed of in approved sharps container to prevent cross-contamination.
  - h. Infectious waste must be:
    - [1] Handled and stored so that human exposure is prevented;
    - [2] Discarded in double-lined plastic bags in a covered waste receptacle or in an approved red bag marked with the international biohazard symbol and stored safely until transported by a licensed infectious waste hauler to an appropriate treatment or disposal facility; and
    - [3] Records of infectious waste disposed of shall be retained for one year.
10. The holder of a body art establishment permit must ensure that the use of towels/linens in the establishment meets the following requirements and that body artists working therein comply with the following requirements:
  - a. Cloth linens, after use, shall be disposed of in a labeled receptacle that has a cover;
  - b. Used cloth linens shall not be used again until they are laundered and sanitized;
  - c. Single-use towels may be used for body art procedures and must be discarded in a labeled receptacle that has a cover, with a disposable plastic liner, immediately following each body art procedure; and
  - d. Linens to be laundered shall be laundered either by a commercial washer which

includes immersion in laundry detergent and either chlorine bleach or water at 160° F., for not less than 15 minutes during the washing and rinsing operation. Linen service from a source approved by the Health Officer or his designee may be substituted as an alternative method.

11. The holder of a body art establishment permit must ensure that the use of products in the establishment meet the following requirements and that all body artists providing services therein comply with the following requirements:
  - a. All liquids, cosmetics, creams, gels, pastes, powders, and other products are kept in clean, closed containers;
  - b. Original product bottles and containers have an original manufacturer label;
  - c. When only a portion of the product is to be used on a client, the product shall be removed from the container by a spatula, scoop, spoon, or dropper so that the product does not come in direct contact with the client and to assure that the remaining product is not contaminated;
  - d. If a product is poured into another container, such as a shaker, dispenser pump container, or spray container, the container is labeled to identify the product;
  - e. Supplies and implements which come in direct contact with a client and cannot be disinfected, such as cotton pads, cotton balls, pads, Q-tips, sponges, bandages, tapes, surgical dressing and other similar items, shall be disposed of in a covered waste receptacle, with a plastic liner, or, if contaminated with body fluids, in a hazardous waste container, immediately after use;
  - f. All products applied to the skin, including stencils, must be single-use and disposable. Petroleum jellies, soaps, and other products used in the application of stencils must be dispensed and applied on the area to be tattooed with sterile gauze or in a manner to prevent contamination; and
  - g. Only petroleum jelly, United States Pharmacopoeia or National Formulary shall be applied to the area to be tattooed and it shall be in a collapsible metal or plastic tube. The application may be spread by the use of sterile gauze or another sterile object but not directly with the fingers.
12. All permit holders must ensure that after use by each operator and/or a client, all nondisposable instruments and procedure work surfaces are cleaned and sterilized with a sanitizer that has a demonstrated antimicrobial activity, as indicated by the product label and that the following requirements are complied with:
  - a. Jewelry used for new body piercing must be sterilized with an autoclave or chem-clave. Acrylic jewelry cannot be used for a new piercing. Jewelry used in healed body piercing does not have to be sterilized, but must be used according to product label;
  - b. Clippers must be disinfected with a liquid chemical sterilant after each use;
  - c. All nondisposable instruments used for body art must be cleansed and sterilized after each use. Autoclave or chem-clave sterilization must be conducted for the cycle of time and corresponding operating pressure recommended by the manufacturer of the autoclave. Sanitizers used in the cleaning process must have demonstrated antimicrobial activity, as indicated by the product label and be registered with the U.S. Environmental Protection Agency;
  - d. Instruments that are to be autoclaved within the facility must be packed in a single-use autoclave bag with the date of sterilization. The expiration date must not exceed 90 days from the date autoclaved;

- e. All sterilized instruments must remain stored in sterilized packages until just prior to performing a body art procedure. Where several instruments are sterilized at the same time in the same package, such as in a single-use setup, once the container is opened any instrument not used immediately in a procedure must be resterilized;
  - f. Every batch of sterilized equipment must be monitored for sterilization by use of a heat sensitive indicator that is capable of indicating approximate time and temperature achieved; and
  - g. Only jewelry meeting the requirements hereunder which is free of nicks, scratches or irregular surfaces and which has been properly sterilized prior to use may be inserted into a newly pierced area.
13. Pigments, colors and dyes used from stock solutions for each client must be placed in a single-use receptacle and the receptacle and remaining solution must be discarded and disposed of after each use.
- a. All dyes, inks and pigments shall be from a source of supply which complies with applicable U.S. Food and Drug Administration regulations when available. Dyes, inks and pigments are to be used in accordance with the manufacturer's directions and are not to be adulterated with any substance not recommended by the manufacturer.
  - b. A client must not receive body art procedures on areas which are irritated/inflamed or have moles, rash, broken skin, infection or any other evidence of an unhealthy condition such as TB, influenza, HIV, impetigo, syphilis, mumps, hepatitis, scleral jaundice or rubella.
  - c. Permit holders and all other operators must be able to demonstrate knowledge in anatomy and skin diseases, infections, disease control and universal precautions.
14. Every body artist must wash his/her hands thoroughly with liquid antibacterial soap and water and dry them with single-use disposable towels, before and after serving each client and at any time during the procedure when the hands may become contaminated.
15. The owner of a body art establishment must ensure that each employee wears gloves, and each operator shall wear gloves in accordance with the following:
- a. When performing body art procedures, the operator must wash his/her hands prior to gloving;
  - b. Gloves must be disposed of after the completion of each procedure on each client; and
  - c. If gloves become torn, punctured or otherwise contaminated, operators must remove and dispose of the gloves, wash his/her hands with liquid soap and water, and dry with a disposable towel, and then put on a new pair of gloves before resuming the body art procedure.
16. Single-use items must not be used on more than one client. After use, all single-use needles, razors, razor blades and other sharps must be immediately disposed of in an approved sharps disposal container in accordance with medical waste removal guidelines as applicable.
17. No body art procedure shall be performed until the following inspections, shavings and preparations of the body art area have occurred:
- a. No body piercing shall be done on skin surfaces which have any rash, pimples, boils, infections or any other evidence of an unhealthy condition;



- b. If the skin is to be shaved, the skin surface must first be washed with soap and warm water. Disposable razors, for each client, shall be used for preparation of the areas to be pierced;
  - c. Prior to piercing, the area to be pierced shall be gently scrubbed with an approved surgical scrub material or a sterile gauze pad soaked in a germicidal preparation registered with the Environmental Protection Agency and applied in accordance with the manufacturer's recommendations;
  - d. Only medical grade markers or ink and sterile toothpicks are to be used to identify the areas to be pierced. Gentian violet may be utilized for marking oral piercings; and
  - e. The use of styptic pencils, alum blocks or other solid styptic to check the flow of blood is prohibited.
18. All permit holders must ensure that the body art establishment, operators and employees use liquid chemical germicide solution in accordance with the manufacturer's directions. Body artists must comply with the following requirements:
- a. Label the liquid chemical germicide solution; and
  - b. Keep the liquid chemical germicide solution covered at all times
19. While in the body art establishment, permit holders must not engage in or allow any other person to engage in any of the following activities:
- a. Consuming food or beverages in any area where body art is performed;
  - b. Storing food in the same area where chemical supplies are used or stored;
  - c. Using, consuming, serving, or in any manner possessing or distributing intoxicating beverages or controlled substances upon its premises during the hours the facility is open to the public and/or any body art procedures are being performed; and
  - d. Performing body art when she/he is under the influence of alcohol, narcotic drugs, stimulants, or depressants or on any person who appears to be under the influence of alcohol, narcotic drugs, stimulants, or depressants.
20. All jewelry to be used in body art procedures is to be made from one of the following grades: 316LVM and/or surgical implant grade stainless steel ASTM F 138; solid yellow or white gold which is 14K or 18K; titanium meeting ASTM TiA4V ELI, F136; niobium; platinum; high-density, low porosity nontoxic plastics meeting FDA standards where applicable (Tygon and PTFE); and autoclavable borosilicate glass (Pyrex). Certification of the quality of the jewelry is to be obtained from the manufacturer/supplier and made available for inspection. Substandard jewelry such as that which is damaged, scratched, intended for earlobes or not expressly designed for body piercing, jewelry made of silver, gold plated or filled or other corrosive metal shall not be used. When stored in a closed clean, dry container, jewelry stored in paper autoclave bags may be stored up to three months and up to one year when a full plastic autoclave bag is used.
21. No person may perform a body art procedure on or to any person under 18 years of age without prior written consent of the parent or court-appointed guardian of such person. The person giving consent must be present during the procedure.
- a. The person providing the body art procedure must retain a copy of the consent for four years.
  - b. Artists have the right to refuse to perform body art procedures on a person at their discretion.

22. All recipients of a body art procedure shall receive from the body artist and/or the body art establishment both written and verbal after care which shall include, inter alia, circumstances under which the client should seek medical treatment.
23. Only dentists/physicians can split tongues.
24. All patrons must be given verbal AND written instructions or pictures demonstrating care of the tattooed area and a recommendation to consult a physician in the event of any sign of infection.
25. Artists shall also be free of skin and infectious diseases to include:
  - A. Boils
  - B. Infected wounds
  - C. Open sores
  - D. Acute respiratory infection
  - E. Other communicable disease or condition
  - F. Nausea
  - G. Vomiting
  - H. Diarrhea
26. Artists cannot work on a customer if in the artist's opinion, that person is intoxicated from drug or alcohol use.
27. The use of styptic pencils, alum blocks, or other solid styptics to check the flow of blood is prohibited.
28. Artist cannot administer anesthetic injections or other medications or prescription drugs.
29. Liquid chemical germicide solutions must be labeled and dated at time of opening, covered at all times and changed weekly (daily in the case of a hypochlorite solution) or when it becomes visibly cloudy or dirty.
30. Items in autoclave bags must have date sterilized and date of expiration and may not be used more than 180 days after sterilization date.
31. MSDS sheets for all compounds utilized must available to all employees and to patrons if requested.
32. Animals may not be tattooed with any of the instruments used in tattooing human patrons.

**G. UPDATING OF ORDINANCE.** In order to carry out the intent of this ordinance, the Board of Health in consultation with the Health Officer may promulgate, from time to time, rules and regulations pertaining to the requirements of sanitation, cleanliness, adequacy of facilities, equipment, and operation of a tattooing establishment consistent with current good practices and this ordinance.

**§ 2208. SUSPENSION AND REVOCATION OF TATTOO ESTABLISHMENT PERMIT.**

- A. A Tattoo Establishment Permit may be suspended or revoked by the Health Officer or his designee upon the occurrence of any of the following events:
1. The application for such Permit contained a false statement(s)
  2. The Operator has violated the provisions of this ordinance
  3. The Operator is convicted or pleads guilty or nolo contendere to an offense listed under the Pennsylvania Crimes Code related to the conduct of business in the tattoo establishment
  4. The Operator is unable to demonstrate qualifications or standards for registration
  5. The Operator is unable to practice with reasonable skill and safety due to illness, addiction to drugs or alcohol, or being convicted of a felony related to the use of controlled substances
  6. Operator violates a lawful regulation or order of the Property Maintenance Division previously entered in a disciplinary proceeding
  7. Operator knowingly maintains a professional connection or association with a person in violation of the act or aiding an unregistered person to practice the profession
  8. Operator acts in such a manner as to present an immediate and clear danger to public health or safety
  9. If record keeping provision is violated, the City can revoke the permit for 2 years. The operator cannot register for a new permit for 2 years from date of violation or date of revocation, whichever is later
  10. Failure to pay Permit fees
- B. The Health Officer or his designee may suspend the Operator permit immediately if in their discretion they determine that continued operation poses a serious health risk.
- C. The Health Officer or his designee shall close the establishment by affixing a placard to the door of the business. The placard cannot be removed until violations are remedied. Removal of the placard after compliance has been met carries a \$150 removal fee.
- D. Health Officer or his designee shall serve the Tattoo Establishment with written notice of said suspension or revocation, specifying the reasons therefore, before said suspension or revocation shall become effective. Service of said notice shall be deemed effective if delivered to the person in apparent charge of the Tattoo Establishment.
- E. The Operator whose permit is revoked must surrender it to the Property Maintenance Division.

#### **§ 2209. Penalties.**

- A. In addition to the revocation and suspension of any permit, as provided in this ordinance, any person violating or failing to comply with any section or provision hereof, or any regulation made under this authority and any person who hinders, obstructs, or interferes with a Health Officer or any of his assistants in the discharge of their duties, shall on conviction, be fined not less than \$50 or more than \$300 plus the costs of their prosecution for the first offense and not less than \$200 or more than \$1000 plus the costs of prosecution for each succeeding offense and in default of payment of such fines and costs, shall be imprisoned for not more than 90 days.
- B. All fees and fines imposed or collected under the provisions of this chapter shall be paid into the City Treasury for the use of the City.
- C. Failure to observe any of the provisions of this chapter is basis for revocation of a permit or denial

of a renewal of a permit. Unless a permit is being temporarily and immediately revoked for health reasons in accordance with the provisions of this chapter, prior to the revocation or denial of renewal, the City shall give 10 days written notice to the permit holder of his violation of or his failure to observe a general condition as set forth herein. If the permit holder requests a hearing prior to the expiration of that ten-day notice period, either the Health Officer or a representative of the Property Maintenance Division shall hold a hearing to determine if the revocation or renewal denial should occur. In order to request a hearing, the permit holder must do so in writing. The permit holder may present evidence in his behalf at such hearing. A written decision shall be rendered within 45 days of the hearing. If the permit holder fails to request such a hearing, the revocation or renewal denial shall be effective upon the expiration of the ten-day period or upon expiration of the term of the existing permit, as will be set forth in the written notice.

- D. Any person convicted of two violations of the provisions of this chapter within any twelve-month period shall have his permit suspended for one full year and shall not be eligible for another permit until the expiration of one full year.
- E. This chapter and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may be otherwise available with or without process of law.

**BILL NO. \_\_\_\_\_ 2013**

**AN ORDINANCE**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF READING, BERKS COUNTY, PENNSYLVANIA, FEE SCHEDULE, TO REFLECT A NEW FEE FOR TATTOO ESTABLISHMENT INSPECTION**

**THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** The Code of Ordinances of the City of Reading, Berks County, Pennsylvania, Tattoo Establishment Inspection Fee shall read as follows:

|                                 |              |
|---------------------------------|--------------|
| <b>Tattoo Establishment Fee</b> | <b>\$100</b> |
|---------------------------------|--------------|

\*Note: the \$50 application fee also applies

**SECTION 2:** All other items, parts, sections, etc. of the Code of Ordinances of the City of Reading, Berks County, Pennsylvania, which are contrary to the schedule set forth above in Section 1 are hereby repealed; otherwise, all other items, parts, sections, etc. of said Code shall remain in effect unchanged and likewise are ratified.

**SECTION 3:** This ordinance shall be effective 10 days after its adoption and approval by the Mayor, in accordance with Section 219 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2013

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_ - 2013**

**AUTHORIZING THE MAYOR TO EXECUTE A TRI-PARTY LEASE AGREEMENT BETWEEN THE CITY OF READING, THE BERKS COUNTY CONSERVANCY AND ALVERNIA UNIVERSITY; A LEASE AGREEMENT BETWEEN THE CITY OF READING AND ALVERNIA UNIVERSITY AND A LEASE AGREEMENT BETWEEN THE CITY OF READING AND THE BERKS COUNTY CONSERVANCY TO PROVIDE FOR THE LEASING OF CERTAIN PORTIONS OF ANGELICA PARK, AS MORE SPECIFICALLY IDENTIFIED IN EXHIBIT "A".**

**WHEREAS**, the City of Reading ("City") is the fee simple owner of a piece of property located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park," having a Parcel Id, No. 18530620812266 (hereinafter referred to as "Angelica") and

**WHEREAS**, the Berks County Conservancy ("Conservancy") and Alvernia University ("Alvernia") wish to lease certain portions of Angelica, as more specifically set forth in Exhibit "A"; and

**WHEREAS**, the City wishes to lease said portions of Angelica to the Berks County Conservancy and Alvernia University; and

**WHEREAS**, the City, the Conservancy and Alvernia desire to set forth in writing covenants related to the leasing of certain portions of Angelica.

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute a tri-party lease agreement between the City of Reading, the Berks Conservancy and Alvernia University; a lease agreement between the City of Reading and the Berks County Conservancy and a lease agreement between the City of Reading and Alvernia University to provide for the leasing of certain portions of Angelica as more specifically identified in Exhibit "A".

SECTION 2: This Ordinance shall become effective in ten (10) days after its adoption and approval by the Mayor in accordance with Section 219 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2013

\_\_\_\_\_  
Council President

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

**TRI-PARTY LEASE AGREEMENT**

THIS TRI-PARTY LEASE AGREEMENT (the "Agreement") is dated to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Commencement Date") by and among CITY OF READING, a third class city of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (the "City"), ALVERNIA UNIVERSITY, a Pennsylvania non-profit corporation, having an address at 400 St. Bernadine

Street, Reading, Pennsylvania 19607 (the “Alvernia”) and BERKS COUNTY CONSERVANCY, a Pennsylvania non-profit corporation, having an address at 25 N. 11<sup>th</sup> Street, Reading Pennsylvania 19601 (the “Conservancy”).

#### **BACKGROUND**

**A. The City is the owner of a tract of land and the improvements erected thereon located in the City of Reading, Berks County, Pennsylvania, being known as “Angelica Park” (hereinafter referred to at times as “Angelica”).**

**B. The Conservancy and Alvernia desire to lease a certain portion of Angelica Park as more specifically set forth in Section 1.1 below and as depicted, described and/or identified as Zones 1 and 3 on the map that is attached hereto and incorporated herein by reference as Exhibit “A” (the “Premises”) from the City and the City desires to lease the Premises to the Conservancy and Alvernia in accordance with the terms and conditions set forth herein.**

**NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and the Alvernia and the Conservancy hereby covenant and agree as follows:**

#### **ARTICLE 1** **PREMISES AND TERM**

**Section 1.1 Grant of Lease.** The City for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Conservancy and Alvernia, and the Conservancy and Alvernia do rent and lease from the City the Premises for the uses and purposes as specifically described as follows:

(a) The area identified as Zone 1 on Exhibit A together with the existing building located thereon known as the Environmental Exploration Center a/k/a the Boathouse (the “Boathouse”), which shall be used by the Conservancy and Alvernia to hold community programs and activities in furtherance of each other their respective non-profit business

purposes for the general public. The Conservancy shall have the primary responsibility for programming at the Boathouse including coordinated programs with community partners such as the City, Alvernia, the Holleran Center, the Reading School District, Albright College, Nolde Forest, the County of Berks and the Berks County Intermediate Unit. In furtherance of this, the Conservancy shall be responsible for scheduled organized activities conducted at the Boathouse or the Premises pursuant hereto and to use its best efforts to prevent scheduling conflicts arising from multiple events being held simultaneously at the Boathouse and/or the Premises. Notwithstanding this, Alvernia shall have primary consideration to conduct its own programming at the Boathouse at times reasonably acceptable to the Conservancy and at no additional costs to Alvernia. Notwithstanding this, the scheduling by the Conservancy of any events/activities within Zone 1 (including the Boathouse) shall be subject to the prior written approval of Alvernia. Additionally, Alvernia shall have the primary right to provide classes and other programming consistent with the Environmental Exploration and Sustainability/Conservation focus of the Center at Zone 1 upon the grant of reasonable advance notice to the Conservancy.

(b) The parking lot within Zone 3, which shall be used collectively by the City, Alvernia and the Conservancy for the parking of motor vehicles of the employees, licensees and invitees of such parties.

**Section 1.2 Term.** The Conservancy and Alvernia shall HAVE AND HOLD the Premises for a term commencing on the Commencement Date and expiring: (a) midnight on that date which is five (5) years from the date of this Agreement, if the Conservancy has not commenced construction of the Improvements by such date (the “Non-Construction Termination”), or (b) if the Conservancy has commenced construction of the Improvements within five (5) years from the date of this Agreement, then this Agreement shall terminate or



expire on the effective date of the termination or expiration of that certain Lease Agreement between the Conservancy and the City dated of even date herewith (collectively, the "Term").

**Section 1.3 Zone 1.** In the event this Agreement is not terminated under Section 1.2(a), Alvernia's right to access and use any and all portions of Zone 1 as set forth in this Agreement shall be terminated.

## **ARTICLE 2**

### **RENT AND CONSIDERATION**

**Section 2.1 Rent (Monthly Utilities).** In consideration of the lease of the Premises, Alvernia shall pay the actual basic utility costs of the Boathouse on a monthly basis directly to the respective utility companies as billed. All such utility bills will be in Alvernia's name.

**Section 2.2 Manner of Payment.** All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Alvernia and the Conservancy to City under the terms of this Lease, shall be paid at the address of City set forth above or at such other place as City shall from time to time designate by notice to Alvernia and the Conservancy, in lawful money of the United States.

## **ARTICLE 3**

### **IMPROVEMENTS TO BE CONSTRUCTED**

#### **BY THE CONSERVANCY AND/OR ALVERNIA AT THE PREMISES**

**Section 3.1 Improvements by the Conservancy.** The parties agree that the Conservancy shall be permitted to construct and relocate its business headquarters to Zone

1 and to erect, install and maintain appropriate signage in accordance with Article 13 below. The aforesaid improvement(s) to be constructed by the Conservancy is hereinafter referred to as the "Improvements". The Conservancy agrees to incorporate the existing Boathouse into its design for the Improvements. Drawings of the proposed Improvements will be provided to the City and Alvernia for their written consent prior to the Conservancy beginning construction/installation of the Improvements at the Premises, which consent shall not be unreasonably withheld or delayed. The Conservancy shall commence construction of the Improvements prior to expiration of the Term.

**Section 3.2 Development by Alvernia.** The parties agree that Alvernia shall be permitted to propose development in limited portions of the Premises identified as Zone 7 on Exhibit A pursuant to a separate Easement Agreement by and between Alvernia and the City to be executed on terms and conditions mutually agreeable to both parties and upon receipt of the prior written consent of the Conservancy, which consent shall not be unreasonably withheld or delayed.

**Section 3.3 Payment for Improvements and Development.** The Conservancy shall be responsible for the entire cost of the Improvements set forth in Section 3.1 above and Alvernia shall be responsible for the entire cost of any development under Section 3.2 above.

## **ARTICLE 4**

### **RESPONSIBILITIES**

**Section 4.1 Alvernia's Responsibilities for the Premises.** In addition to other costs/expenses set forth elsewhere in this Agreement, Alvernia shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at Alvernia's sole cost and expense:

- (a) Until the Non-Construction Termination or the Conservancy's commencement of construction of the Improvements, the monthly basic utility costs to the Boathouse payable either directly to the City or to the respective utility provider, as applicable.
- (b) Until the Non-Construction Termination or the Conservancy's commencement of the Improvements, the routine minor maintenance of the Premises and the Boathouse including, but not limited to, the trimming and care of grass/lawn areas, trees and shrubbery, janitorial service and trash removal; provided that, in the performance of said duties, Alvernia agrees to confer with the Conservancy on issues involving the maintenance of those areas of the Premises that are adjacent to the Boathouse.
- (c) A secondary role in the security and public safety duties at the Premises in conjunction with City.
- (d) After the Conservancy has commenced construction of the Improvements, Alvernia will have the responsibilities for the parking lot and roadways set forth in Section 4.1(d) of that certain Lease Agreement between the Conservancy and the City dated of even date herewith.

**Section 4.2 City's Responsibilities for the Premises.** In addition to other costs/expenses set forth elsewhere in this Agreement, the City shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the City's sole cost and expense:

- (a) The primary police, fire, emergency, security and public safety duties.

- (b) Until the Non-Construction Termination or the Conservancy's commencement of the Improvements, the cost of major repairs and/or improvements to the Boathouse and/or the Premises (not including the Improvements).

**Section 4.3 Conservancy's Responsibilities for the Premises.** In addition to other costs/expenses set forth elsewhere in this Agreement, the Conservancy shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the Conservancy's sole cost and expense:

- (a) The Improvements.
- (b) Landscaping around the Boathouse.
- (c) The Garden.
- (d) After the Conservancy has commenced construction of the Improvements, the Conservancy will have the responsibilities for the parking lot and roadways set forth in Section 4.1(d) of that certain Lease Agreement between the Conservancy and the City dated of even date herewith.

**Section 4.4 Compliance with Law.** Neither Alvernia nor the Conservancy shall use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Alvernia and the Conservancy shall at all times ensure that its use of the Premises is within full compliance with all applicable statutes and ordinances.

**Section 4.5 Permits and Licenses.** Alvernia and the Conservancy shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for their use of the Premises as set forth herein.

**Section 4.6 No Violation of Insurance Contracts.**

The parties shall not use the Premises in any manner which would make void or voidable any insurance required to be carried by them or which will make it impossible for either party to obtain fire, general liability or other insurance.

**Section 4.7 No Discrimination.**

Alvernia and the Conservancy covenant and agree that during their use of the Premises, neither will discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

**ARTICLE 5**

**INTENTIONALLY OMITTED**

**ARTICLE 6**

**GOVERNMENT APPROVALS**

**Section 6.1 Conservancy's Responsibility to Obtain Government Approvals.**

The Conservancy shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The City will support and cooperate with the Conservancy in any efforts to gain necessary government or municipal approvals on a timely basis.

**ARTICLE 7**

**INSURANCE**

**Section 7.1 Casualty Insurance.**

The City, Alvernia and the Conservancy shall respectively keep the Boathouse and their respective personal property thereat (if any) insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Property Insurance". Upon the occurrence of an insurable event resulting in loss, damage or destruction, the insurance

of the City shall be primarily responsible and, thereafter, the insurance of Alvernia and the Conservancy shall equally share the remaining responsibility unless the insurable event resulting in loss, damage or destruction is direct cause of the negligence or misconduct of one of the parties hereto in which event the insurance for the responsible party shall be primarily responsible for the loss, damage or destruction. Upon commencement of the construction of the Improvements and while this Agreement is still in effect, the Conservancy solely shall keep the Improvements insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Property Insurance".

**Section 7.2 Liability Insurance.** All parties shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury/death and property damage. All parties will each, at their sole cost and expense, obtain and maintain insurance with insurance companies approved by the other for general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, students, guests, spectators, participants, officials, concessionaires or others, and shall provide each other with Certificates of Insurance naming the other party as an additional insured. If the City is self-insured, the City shall provide Alvernia and the Conservancy with proof of adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

**Section 7.3 Additional Insureds.** All parties shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

## ARTICLE 8

### INDEMNIFICATION

**Section 8.1 Indemnification by City.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of Alvernia and/or the Conservancy, their employees, agents, contractors, and/or students, the City agrees to and does hereby indemnify and hold Alvernia and the Conservancy harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property caused by the acts or omissions of City's agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the City's use, occupation and enjoyment of the Premises by the City; or (ii) the breach by City of the provisions of this Agreement.

**Section 8.2 Indemnification by Alvernia.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the City and/or the Conservancy, their employees, agents, contractors, invitees and/or residents, Alvernia agrees to and does hereby indemnify and hold the City and the Conservancy harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, students or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Alvernia; or (ii) the breach by Alvernia of the provisions of this Agreement.

**Section 8.3 Indemnification by the Conservancy.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the City and/or Alvernia, their employees, agents, contractors, invitees, members, spectators, participants, officials,

concessionaires, students and/or residents or students, the Conservancy agrees to and does hereby indemnify and hold the City and Alvernia harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials or concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Conservancy; (ii) any penalty, damage or charge incurred or imposed by reason of its violation of law or ordinance, including, but not limited to zoning and building code ordinances; or (iii) the breach the Conservancy of the provisions of this Agreement.

**Section 8.4 Indemnification not Limited by Insurance.** Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish each parties responsibilities hereunder.

**Section 8.5 Survival of Termination of Agreement.** These indemnifications shall survive the termination of this Agreement.

**Section 8.5 Waiver of Immunity.** The City hereby waives any statutory immunity and limit on its liability as between the parties hereto for claims arising pursuant to this Agreement, and specifically Articles 7 and 8, or the City's use of the Premises.

## **ARTICLE 9**

### **ENVIRONMENTAL**

**Section 9.1 Compliance with Environmental Laws.** The City, Alvernia and the Conservancy agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or



matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on Zone 1.

**Section 9.2 Environmental Indemnification.** The City, Alvernia and the Conservancy agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or activities conducted by the party thereon, unless the environmental conditions are caused by the other party provided, however, that Alvernia and the Conservancy shall have no duty to hold harmless and/or indemnify the City hereunder for anything related to any conduct, failure to act and/or the condition of the Premises that occurred or was in existence prior to the date of this Agreement.

### **Section 9.3 Indemnifications Survive**

**Termination of Agreement.** The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

## **ARTICLE 10**

## **CONDEMNATION**

**Section 10.1 Condemnation.** In the event the City receives notification of any condemnation proceedings affecting the Premises, the City will promptly provide notice of the proceeding to Alvernia and the Conservancy. If a condemning authority takes all of the Premises, or a portion sufficient, in Alvernia and the Conservancy's mutual reasonable determination, to render the Premises unsuitable for use by Alvernia and the Conservancy pursuant hereto, this Agreement will terminate as of the date the title vests in the condemning authority. Alvernia and the Conservancy shall be entitled to reimbursement for any prepaid rent on a pro rata basis by either party and to the Conservancy for the fair market value of the Improvements constructed by the Conservancy at the Premises (if any) in accordance with Article 3 above.

## **ARTICLE 11**

### **CASUALTY**

**Section 11.1 Casualty.** Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty provided that said party has actual knowledge of the casualty. If any part of the Premises is damaged by fire or other casualty so as to render the Premises unsuitable, in Alvernia and the Conservancy's reasonable determination, then Alvernia and the Conservancy may terminate this Agreement by providing written notice to the City, which termination will be effective as of the date of such damage or destruction. Upon such termination, Alvernia and the Conservancy shall be entitled to reimbursement for any prepaid rent on a pro rata basis by either party and for the fair market value of the Improvements constructed by the Conservancy at the Premises (if any) in accordance with Article 3 above.

## ARTICLE 12

### **DEFAULT AND RIGHT TO CURE**

**Section 12.1 Default by Alvernia and/or the Conservancy.** The following will be deemed a default by Alvernia and/or the Conservancy and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from City of such failure to pay; or (ii) either parties failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from City specifying the failure. No such failure, however, will be deemed to exist if Alvernia and/or the Conservancy has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Alvernia and/or the Conservancy. If Alvernia and/or the Conservancy remains in default beyond any applicable cure period, the City will have the right to exercise any and all rights and remedies available to it under law and equity, including but not limited to termination provided that if the construction of the Improvements has commenced, City shall reimburse the Alvernia and/or the Conservancy for the fair market value of the Improvements.

**Section 12.2 Default by City.** The following will be deemed a default by the City and a breach of this Agreement: the City's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Alvernia and/or the Conservancy specifying the failure. No such failure, however, will be deemed to exist if the City has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the City. If the City remains in default beyond any applicable cure period, Alvernia and the Conservancy will have the right to exercise any and all rights available to it under law and equity, including

but not limited to termination, provided that if the construction of the Improvements has commenced, City shall reimburse the Alvernia and/or the Conservancy for the fair market value of the Improvements.

## **ARTICLE 13**

### **SIGNS**

**Section 13.1 General Signage.** Subject to applicable ordinances and Section 13.2 below, signage shall be installed by the Conservancy at Angelica which shall identify the Premises as being owned by the City of Reading but also the business headquarters of the Conservancy.

**Section 13.2 Conservancy's Signs.** The Conservancy shall be permitted to erect and install signs identifying the Conservancy at the Boathouse and at the entrance to the Premises on Route 10 and within Zone 10 at the Premises. Additionally, the Conservancy shall be permitted to erect and install signs for an agreed upon number of reserved parking spaces (not more than 12) identifying reservation for the Conservancy within the parking lot at Zone 3 of the Premises upon receipt of the prior written consent of Alvernia and the City, which consent shall not be unreasonably withheld.

## **ARTICLE 14**

### **ASSIGNMENT**

**Section 14.1 Assignment.** No party hereto may assign or otherwise transfer its interest in this Agreement without first obtaining the written consent of the other party, which consent may not be unreasonably withheld .

## **ARTICLE 15**

### **ENTIRE AGREEMENT**

**Section 15.1 Entire Agreement.** This Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by the City, Alvernia and the Conservancy. This Agreement shall be binding on the parties hereto, and their respective successors and assigns.

## **ARTICLE 16**

### **NOTICES**

**Section 16.1 Notices.** Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

|                 |   |
|-----------------|---|
| If to City:     | City of Reading<br>815 Washington Street<br>Reading, PA 19601<br>Attn: Managing Director    |
| With a copy to: | Charles D. Younger, Esquire<br>City Solicitor<br>815 Washington Street<br>Reading, PA 19601 |
| If to Alvernia: | Alvernia University<br>400 Saint Bernadine Street   |

Reading, PA 19607-1799  
Attention: Douglas F. Smith, Vice President

With a copy to: Heidi B. Masano, Esquire  
Masano ♦ Bradley, LLP  
1100 Berkshire Boulevard, Suite 201  
Wyomissing, PA 19610

If to Conservancy: Berks County Conservancy  
25 North 11<sup>th</sup> Street  
Reading, PA 19601  
Attention: Kimberly J. Murphy, President

With a copy to: Christopher J. Hartman, Esquire  
Hartman Shurr  
1100 Berkshire Boulevard, Suite 301  
Wyomissing, PA 19610

## **ARTICLE 17**

### **SEVERABILITY**

**Section 17.1 Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

## **ARTICLE 18**

### **APPLICABLE LAW**

**Section 18.1 Applicable Law.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both parties. The parties consent to the personal jurisdiction and venue of the

Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

## **ARTICLE 19**

### **MEDIATION**

**Section 19.1 Mediation.** Notwithstanding the provision of Article 18 set forth above, any disputes between City, Alvernia and/or the Conservancy shall first be submitted to mediation through the Berks County Bar Association Civil Dispute Resolution Program, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

## **ARTICLE 20**

### **RELATIONSHIP OF THE PARTIES**

**Section 20.1 Relationship of the Parties.** It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Alvernia, the Conservancy and City shall use the Premises in accordance with the terms of this Agreement. Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

## **ARTICLE 21**

### **SURRENDER**

**Section 21.1 Surrender.** Upon termination of this Agreement, Alvernia and the Conservancy shall peaceably surrender the Premises to City in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, subject to the construction set forth in Article 3, reasonable wear and tear and damage by casualty excepted.

## **ARTICLE 22**

### **MEMORANDUM OF LEASE**

**Section 22.1 Memorandum of Lease.** In order for Alvernia and the Conservancy to obtain a policy of leasehold title insurance, the parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the parties in this Lease Agreement; (ii) the term of this Lease; and (iii) the location of the Premises subject to the Lease.

## **ARTICLE 23**

### **ALVERNIA AND THE CONSERVANCY'S RIGHT OF FIRST REFUSAL**

**Section 23.1 Right of First Refusal.** The parties hereby acknowledge and agree that nothing in this Agreement shall be construed to supersede, limit or otherwise nullify the rights of first refusal to purchase granted by the City to both Alvernia and the Conservancy in separate lease agreements of even date herewith for certain portions of Angelica.

## **ARTICLE 24**

### **MEDIA ACKNOWLEDGMENT**

**Section 24.1 Media.** The parties hereto agree that any and all media acknowledgement of the Boathouse and/or the Premises resulting from activities conducted



pursuant to this Agreement or otherwise shall recognize the City, Alvernia and the Conservancy regardless of the primary party sponsoring the activity or event.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their hands and seals on the day and year first above written.

WITNESS:

\_\_\_\_\_

ALVERNIA:

ALVERNIA UNIVERSITY

By: \_\_\_\_\_  
Name: Douglas F. Smith  
Title: Vice President

WITNESS:

\_\_\_\_\_

CONSERVANCY:

BERKS COUNTY CONSERVANCY

By: \_\_\_\_\_  
Name: Kimberly J. Murphy  
Title: President

CITY:

CITY OF READING

Attest: \_\_\_\_\_

\_\_\_\_\_  
Chief Clerk

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT “A”**

PREMISES

## **LEASE AGREEMENT**

THIS AGREEMENT OF LEASE (the "Agreement") is dated to be effective as of the \_\_\_\_ day of September, 2013 (the "Commencement Date") by and between CITY OF READING, a third class city of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (the "Lessor") and ALVERNIA UNIVERSITY, a Pennsylvania non-profit corporation, having an address at 400 St. Bernardine Street, Reading, Pennsylvania 19607 (the "Lessee")

### **BACKGROUND**

C. The Lessor is the owner of a tract of land and the improvements erected thereon located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park" (hereinafter referred to at times as "Angelica").

D. The Lessee desires to lease certain portions of Angelica Park as more specifically depicted, described and/or identified in Section 1.1 below and on the map that is attached hereto and made a part hereof by reference as Exhibit "A" (the "Premises") from the Lessor and the Lessor desires to lease the Premises to the Lessee in accordance with the terms and conditions set forth herein.

E. The Lessor is also willing to grant to the Lessee an option to purchase and a right of first refusal on the Premises and Angelica as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Lessor and the Lessee hereby covenant and agree as follows:

### **ARTICLE 1** **PREMISES AND TERM**

**Section 1.1 Grant of Lease.** The Lessor for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Lessee, and the

Lessee does rent and lease from the Lessor the Premises for the uses and purposes as specifically described as follows:

(a) The entire portion of the Premises identified as Zone 3 on Exhibit A shall be used for active, passive and open recreation space from dawn to dusk for the general public including, but not limited to, residents of the Lessors, visitors to Angelica and the students, employees, licensees and invitees of the Lessee.

(b) That certain portion of the Premises within Zone 7 on Exhibit A, which is land that establishes an approximate one hundred (100) foot setback from St. Bernardine Street and which shall be used improve, beautify and enhance the St. Bernardine Street corridor.

(c) The entire portions of the Premises identified as Zones 3 and 4 on Exhibit A shall be used by the Lessee to erect, install, operate and maintain appropriate signage in accordance with Article 13 below and other lighting fixtures/improvements.

(d) The entire portion of the Premises identified as Zone 8 on Exhibit A may be used by the Lessee, at its discretion and without any duty/obligation owed to Lessor, to erect, install, operate and maintain appropriate lighting fixtures/improvements.

**Section 1.2 Term.** The Lessee shall HAVE AND HOLD the Premises for a term of fifty (50) years commencing on the Commencement Date and expiring at midnight on \_\_\_\_\_, 2063 (the "Term"). As of the fortieth ("40<sup>th</sup>") anniversary of the Commencement Date, the parties agree to commence negotiations for renewal of this Agreement or a new Lease for the Premises upon terms and conditions mutually agreeable to both the Lessor and Lessee.

## **ARTICLE 2**

### **RENT AND CONSIDERATION**

**Section 2.1 Rent.** In consideration of the lease of the Premises, Lessee shall pay to Lessor on the Commencement Date the sum of One Dollar (\$1.00) for each year of the Term. As additional rent, Lessee shall be responsible, at its sole cost and expense, for the maintenance expenses set forth in Section 5.1 below.

**Section 2.2 Manner of Payment.** All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid at the address of Lessor set forth above or at such other place as Lessor shall from time to time designate by notice to Lessee, in lawful money of the United States.

**Section 2.3 SILOT (Service In Lieu Of Taxes) Credit.** In consideration for the assumption by the Lessee of the maintenance costs and expenses set forth in Section 5.1 below, the Lessor agrees to provide the Lessee with an annual SILOT credit in the amount of said annual maintenance costs and expenses.

## **ARTICLE 3**

### **IMPROVEMENTS TO BE CONSTRUCTED BY LESSEE AT THE PREMISES**

**Section 3.1 Improvements by Lessee.** The parties agree that the Lessee shall be permitted to construct/install signage, lighting, fencing, fixtures, improvements and such other capital projects as may be proposed by the Lessee from time to time at the Premises. The aforesaid improvements to be constructed by Lessee are hereinafter collectively referred to as the "Improvements". Drawings of the proposed Improvements will be provided to both the Lessor and the Berks County Conservancy for their written consent prior to the Lessee beginning construction/installation of the Improvements at the Premises, which consent shall not be unreasonably withheld or delayed.

**Section 3.2 Payment for Improvements.** Lessee shall be responsible for the entire cost of the Improvements.

**Section 3.3 Disc Golf Course in Zone 3.** The Lessee agrees to maintain the disc golf course in Zone 3, provided, however, that the locations of the tees and greens therefor shall be subject to relocation by the Lessee upon receipt of the prior consent of the Lessor.

#### **ARTICLE 4**

##### **RESPONSIBILITIES OF LESSEE AND LESSOR**

**Section 4.1 Lessee's Responsibilities for the Premises.** In addition to other costs/expenses set forth elsewhere in this Agreement, the Lessee shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the Lessee's sole cost and expense:

- (e) The Improvements.
- (f) The maintenance of the Premises as detailed in Section 5.1 below. In the performance of said duties, the Lessee agrees to confer with the Berks County Conservancy on issues involving the maintenance of those areas of the Premises in Zone 3 that are within fifty (50) feet of the boundary lines separating Zone 3 from Zones 1, 2, 7 and 9 (which are subject to a separate lease agreement between the Lessor and the Berks County Conservancy).
- (g) A secondary role in the security and public safety duties at Angelica in conjunction with Lessor.
- (h) In the event that the parties hereto mutually agree that major repairs, improvements, upgrades, and/or repaving of the parking lot and roadway(s) in Zone 3 of the Premises (excluding the roadway set forth in Section 4.2(a) below and not including the Improvements) located within Angelica are necessary, the Lessee and the Berks County Conservancy

shall each pay fifty percent (50%) of such costs. If the parties are unable to mutually agree on the need and extent of such repairs, etc., said dispute shall be resolved in accordance with Section 19.1 hereunder. For purposes of this section, "major" shall refer to costs in excess of the collective amount of Ten Thousand Dollars (\$10,000.00).

**Section 4.2 Lessor's Responsibilities for the Premises.** In addition to other costs/expenses set forth elsewhere in this Agreement, the Lessor shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the Lessor's sole cost and expense:

- (a) The ownership, control, repair and maintenance responsibilities for St. Bernadine Street as the public roadway through Angelica Park to Route 10, which Lessor shall maintain as public road for the Term.
- (b) The primary police, fire, emergency, security and public safety duties at Angelica including the enforcement of all laws, codes and ordinances.

**Section 4.3 Compliance with Law.** The Lessee shall not use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Lessee shall at all times ensure that its use of the Premises is within full compliance with all applicable statutes and ordinances.

**Section 4.4 Permits and Licenses.** The Lessee shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for its use of the Premises as set forth herein.

**Section 4.5 No Violation of Insurance Contracts.** The Lessee and Lessor shall not use the Premises in any manner which would make void or voidable any insurance required to be carried by the Lessor or the Lessee or which will make it impossible for either party to obtain fire, general liability or other insurance.

**Section 4.6 No Discrimination.** The Lessee covenants and agrees that during its use of the Premises, it will not discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

**Section 4.7 No Change in Use of Angelica.** During the Term, Lessor will neither change the zoning classification of Angelica from its classification existing as of the Commencement Date nor permit the character or use of Angelica to developed or used in any manner not permitted by said zoning regulations.

## **ARTICLE 5**

### **PAYMENT OF EXPENSES**

**Section 5.1 Lessee's Obligations.** The Lessee shall have the responsibility for maintenance of the Premises, and the payment of all costs related thereto, and for the payment of utilities at the Premises, including, but not limited to, trimming and care of grass/lawn areas, trees and shrubbery and trash removal at the Premises.

**Section 5.2 Maintenance Standards.** Lessee's Maintenance shall be performed in accordance with the Lessee's general standards of maintenance and repair.

**Section 5.3 Taxes.** In the event that the Pennsylvania Department of Revenue, the City of Reading, the Reading School District and/or any other governmental authority or taxing body determines that this Agreement is subject to realty transfer tax under the provisions of Pennsylvania Realty Transfer Tax, as amended, and, as a result thereof, imposes or assesses realty transfer tax on the transaction contemplated by this Agreement,



the Lessor shall not collect and shall forever waive and exonerate the entire portion of the realty transfer tax (currently 4%) that would otherwise be imposed upon the transaction contemplated by this Agreement. In consideration therefor, the Lessee shall pay the remaining portion of the realty transfer tax imposed upon the transaction contemplated by this Agreement that is due to the Pennsylvania Department of Revenue but not otherwise exempt or excluded because of the status of the Lessor as a political subdivision under the Pennsylvania Realty Transfer Tax, as amended, and its applicable regulations.

## **ARTICLE 6**

### **GOVERNMENT APPROVALS**

**Section 6.1 Lessee's Responsibility to Obtain Government Approvals.** The Lessee shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The Lessor will support and cooperate with the Lessee in any efforts to gain necessary governmental, municipal or other local, state or federal agency approvals, including by confirming or affirming Lessee's standing to obtain such approvals.

## **ARTICLE 7**

### **INSURANCE**

**Section 7.1 Casualty Insurance.** The Lessee shall keep the Improvements hereinafter constructed at the Premises and any buildings/improvements currently existing at the Premises (if any) to be insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Property Insurance".

**Section 7.2 Liability Insurance.** Lessor and the Lessee shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily

injury/death and property damage. The Lessor and the Lessee, will each, at their sole cost and expense, obtain and maintain insurance with insurance companies approved by the other for general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, students, guests, spectators, participants, officials, concessionaires, officers, licensees, invitees or others, and shall provide each other with Certificates of Insurance naming the other party as an additional insured. If the Lessor is self-insured, the Lessor shall provide Lessee with proof of adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

**Section 7.3 Additional Insureds.** The Lessor and the Lessee shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

## **ARTICLE 8**

### **INDEMNIFICATION**

**Section 8.1 Indemnification by Lessor.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessee, its employees, agents, contractors, and/or students, the Lessor agrees to and does hereby indemnify and hold the Lessee harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Lessor; or (ii) the breach by Lessor of the provisions of this Agreement.

**Section 8.2 Indemnification by Lessee.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessor, its employees, agents, contractors, invitees and/or residents, the Lessee agrees to and does hereby indemnify and hold the Lessor harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Lessee; (ii) any penalty, damage or charge incurred or imposed by reason of any violation of law or ordinance, including, but not limited to zoning and building code ordinances, by Lessee; or (iii) the breach by Lessee of the provisions of this Agreement.

**Section 8.3 Indemnification not Limited by Insurance.** Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish the Lessor's or Lessee's responsibilities hereunder.

**Section 8.4 Survival of Termination of Agreement.** These indemnifications of the Lessor and the Lessee shall survive the termination of this Agreement.

**Section 8.5 Waiver of Immunity.** Lessor hereby waives any statutory immunity and limit on its liability as between the Lessor and the Lessee for claims arising pursuant to this Agreement, and specifically Articles 7 and 8, or the Lessor's use of the Premises or the use of the Premises by Lessor's agents, employees, contractors, invitees, spectators, participants, officials, residents or concessionaires.

## **ARTICLE 9**

### **ENVIRONMENTAL**

**Section 9.1 Compliance with Environmental Laws.** Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Premises.

**Section 9.2 Environmental Indemnification.** Lessor and Lessee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or activities conducted by the party thereon, unless the environmental conditions are caused by the other party provided, however, that the Lessee shall have no duty to hold harmless and/or indemnify the Lessor hereunder for anything related to any conduct, failure to act and/or the condition of the Premises that occurred or was in existence prior to the date of this Agreement.

**Section 9.3 Indemnifications Survive Termination of Agreement.** The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees

incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

## **ARTICLE 10**

### **CONDEMNATION**

**Section 10.1 Condemnation.** In the event Lessor receives notification of any condemnation proceedings affecting the Premises, Lessor will promptly provide notice of the proceeding to Lessee. If a condemning authority takes all of the Premises, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to reimbursement for any prepaid rent on a pro rata basis and for the undepreciated value of the Improvements constructed by Lessee at the Premises in accordance with Article 3 above.

## **ARTICLE 11**

### **CASUALTY**

**Section 11.1 Casualty.** Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty. If any part of the Premises is damaged by fire or other casualty so as to render the Premises unsuitable, in Lessee's reasonable determination, then Lessee may terminate this Agreement by providing written notice to the Lessor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee shall be entitled to reimbursement for any prepaid rent on a pro rata basis and for the undepreciated value of the Improvements constructed by Lessee at the Premises in accordance with Article 3 above.

## ARTICLE 12

### **DEFAULT AND RIGHT TO CURE**

**Section 12.1 Default by Lessee.** The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor agrees to promptly inform Berks County Conservancy and Berks County Conservancy shall have a period of not less than thirty (30) days from such notice to negotiate an assignment of this Agreement to the Berks County Conservancy and, upon expiration of such assignment option, to exercise any and all rights and remedies available to it under law and equity, including but not limited to termination of this Agreement.

**Section 12.2 Default by Lessor.** The following will be deemed a default by Lessor and a breach of this Agreement: Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, Lessee will have the right to exercise any and all rights

available to it under law and equity, including but not limited to termination and Lessor shall reimburse the Lessee for the fair market value of the Improvements.

## **ARTICLE 13**

### **SIGNS**

**Section 13.1 General Signage.** Subject to applicable ordinances, signage shall be installed by the Lessee which shall identify the Premises as being owned by the City of Reading but also a part of the main campus of Alvernia University.

**Section 13.2 Lessee's Signs.** The Lessee shall be permitted to display banners from the light poles and fences installed at the Premises to identify the property as part of the main campus of Alvernia University.

## **ARTICLE 14**

### **ASSIGNMENT**

**Section 14.1 Assignment.** At any time during the Term, Lessee may elect to assign this Agreement and all Lessee's right, title, interest, duties and obligations hereunder to a third party, subject, however, to Lessor's approval, which approval shall not be unreasonably withheld. In the event Lessor approves Lessee's assignment of this Agreement to a third party, Lessee shall have no further responsibility or obligation to Lessor, whatsoever. Lessor may not assign this Agreement to any third party without the prior written consent of Lessee.. Any such assignment by the Lessee shall include its right of first refusal set forth in Article 23 below.

## **ARTICLE 15**

### **ENTIRE AGREEMENT**

**Section 15.1 Entire Agreement.** This Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants,

promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by Lessor and Lessee. This Agreement shall be binding on the parties hereto, and their respective successors and assigns.

## **ARTICLE 16**

### **NOTICES**

**Section 16.1 Notices.** Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

|                 |  |
|-----------------|--|
| If to Lessor:   | City of Reading<br>815 Washington Street<br>Reading, PA 19601<br>Attn: Managing Director                                   |
| With a copy to: | Charles D. Younger, Esquire<br>City Solicitor<br>815 Washington Street<br>Reading, PA 19601                                |
| If to Lessee:   | Alvernia University<br>400 Saint Bernadine Street<br>Reading, PA 19607-1799<br>Attention: Douglas F. Smith, Vice President |
| With a copy to: | Heidi B. Masano, Esquire<br>Masano ♦ Bradley, LLP  |



## **ARTICLE 17**

### **SEVERABILITY**

**Section 17.1 Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

## **ARTICLE 18**

### **APPLICABLE LAW**

**Section 18.1 Applicable Law.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both parties. The parties consent to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the

terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

## **ARTICLE 19**

### **MEDIATION**

**Section 19.1 Mediation.** Notwithstanding the provision of Article 18 set forth above, any disputes between Lessor and Lessee shall first be submitted to mediation through the Berks County Bar Association Civil Dispute Resolution Program, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

## **ARTICLE 20**

### **RELATIONSHIP OF THE PARTIES**

**Section 20.1 Relationship of the Parties.** It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Lessee and Lessor shall use the Premises in accordance with the terms of this Agreement. Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

## **ARTICLE 21**

### **SURRENDER**

**Section 21.1 Surrender.** Upon termination of this Agreement, Lessee shall peaceably surrender the Premises to Lessor in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, subject to the construction set forth in Article 3, reasonable wear and tear and damage by casualty excepted.

## **ARTICLE 22**

### **MEMORANDUM OF LEASE**

**Section 22.1 Memorandum of Lease.** In order for Lessee to obtain a policy of leasehold title insurance, the parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the parties in this Lease Agreement; (ii) the term of this Lease; (iii) the location of the Premises subject to the Lease; and (iv) the Lessee's option to purchase and right of first refusal to purchase the Premises.

## **ARTICLE 23**

### **LESSEE'S RIGHT OF FIRST REFUSAL**

**Section 23.1 Lessee's Right of First Refusal.** If, at any time during the Term, Lessor desires to list for sale, sell or shall receive a bona fide offer from any third party to purchase Angelica or any portion of Angelica, including, without limitation, the Premises (the "Proposed Sale"), Lessee shall have a Right of First Refusal as follows:

(a) Lessor shall give Lessee notice in writing of the Proposed Sale, which notice shall include the price, terms and conditions of the Proposed Sale ("Lessor's Notice"). Included with Lessor's Notice shall be such information as shall reasonably enable Lessee to establish all of the terms of the offer and that the offer is bona fide, including (without limitation) a true and correct copy of the letter of intent or agreement of sale, if any. If the Right of First Refusal arises because the Lessor desires to sell (and not because of receipt of a bona fide offer to purchase from a third party), the purchase price in the Lessor's Notice shall be based on a "then current" market valuation/appraisal of Angelica, as determined by a mutually acceptable and certified real estate appraiser in an appraisal report.

(b) Upon receipt of the Lessor's Notice, the Lessee shall have a period of seventy-five (75) days to exercise the Right of First Refusal to purchase Angelica. Lessee understands and acknowledges that Berks County Conservancy has an identical Right of First Refusal in the Berks County Conservancy Lease. In the event that Berks County Conservancy also elects to purchase Angelica, Lessee's (and Berks County Conservancy's) Right of First Refusal will be reduced to the right to purchase the Premises, for the Lessee, and the right to purchase the remaining portions of Angelica not including the Premises and not including the areas that are the subject of the Tri-Party Agreement, for Berks County Conservancy. Lessee and Berks County Conservancy will have a further forty-five (45) days to prepare and agree to a Declaration of Condominium providing for two (2) units corresponding to those portions of Angelica that are leased solely to each party, with common elements or areas being those portions of Angelica that are shared between Lessee and Angelica as set forth in the Tri-Party Agreement. In the event Lessee and Berks County Conservancy are able to agree to an acceptable Declaration of Condominium within the said forty-five (45) day period, then Lessee and Berks County Conservancy will, within thirty (30) days from the end of the forty-five (45) day period, purchase the respective condominium units of Angelica and Lessee will record the Declaration of Condominium that has been agreed to between them. In the event Lessee does not elect to purchase Angelica, Lessor may sell the same to Berks County Conservancy, if Berks County Conservancy has elected to purchase Angelica, or to such third party with whom Lessor agrees to sell Angelica. In the event of a sale of Angelica to Berks County Conservancy or a third party, this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their hands and seals on the day and year first above written.

WITNESS:

LESSEE:

ALVERNIA UNIVERSITY

\_\_\_\_\_

By: \_\_\_\_\_

Name: Douglas F. Smith

Title: Vice President

LESSOR:

CITY OF READING

Attest: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Chief Clerk

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **LEASE AGREEMENT**

THIS AGREEMENT OF LEASE (the "Agreement") is dated to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Commencement Date") by and between CITY OF READING, a third class city of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (the "Lessor") and BERKS COUNTY CONSERVANCY, a Pennsylvania non-profit corporation, having an address at 25 N. 11<sup>th</sup> Street, Reading, Pennsylvania 19601 (the "Lessee").

### **BACKGROUND**

**F. The Lessor is the owner of a tract of land and the improvements erected thereon located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park," having Parcel Id. No. 18530620812266 (hereinafter referred to at times as "Angelica").**

**G. The Lessee desires to lease certain portions of Angelica as more specifically depicted, described and/or identified in Section 1.1 below and on the map that is attached hereto and made a part hereof as Exhibit A from the Lessor and the Lessor desires to lease the Premises (as defined herein) to the Lessee in accordance with the terms and conditions set forth herein.**

**H. The Lessor is also willing to grant to the Lessee an option to purchase and a right of first refusal on the Premises and Angelica as hereinafter provided.**

**NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Lessor and the Lessee hereby covenant and agree as follows:**

### **ARTICLE 1** **PREMISES AND TERM**

**Section 1.1 Grant of Lease; Permitted Use.** The Lessor for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Lessee, and the Lessee does rent and lease from the Lessor the areas identified on Exhibit A as

Zones 1, 2, 6, 7 and 9; excepting, however, that portion of Zone 7 that has been leased to Alvernia University as set forth in that certain Lease Agreement between the Lessor and Alvernia University dated of even date herewith (the "Alvernia Lease") (the "Premises"). Lessee will use the Premises for programming as set forth more specifically in Section 1.1(a) of that certain Tri-Party Agreement between Lessor, Lessee and Alvernia University dated of even date herewith (the "Tri-Party Agreement") and for active, passive and open recreation space from dawn to dusk for the general public including, but not limited to, residents of the Lessors, visitors to Angelica and the employees, licensees and invitees of the Lessee. Notwithstanding anything contained or construed herein to the contrary, and with the exception of the Improvements (as defined herein) it is the intention of the parties hereto that the general public will have access to all portions of Angelica, subject to Lessor's rules and regulations governing access to and use of Angelica. Lessee shall have sole authority to determine access to and use of the Improvements by all persons, including the general public.

**Section 1.2 Term.** The Lessee shall HAVE AND HOLD the Premises for the lesser of: (a) ninety-nine (99) years commencing on the Commencement Date and expiring at midnight on the day immediately preceding the ninety-ninth (99<sup>th</sup>) anniversary of the Commencement Date, (b) until the expiration or termination of the Tri-Party Agreement, as set forth in Section 1.2 of the Tri-Party Agreement, or (c) the termination of this Agreement as permitted under Section 1.3, below (the "Term").

**Section 1.3 Termination.**

(a) **Lessor's Right to Terminate Between Years 30 and 50.** After the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date, but before the fiftieth (50<sup>th</sup>) anniversary of the Commencement Date (the "First Termination Period"), Lessor may elect to

terminate this Agreement for any or no reason; provided, however, that Lessor has first provided Lessee with the Termination Notice (as defined herein). In the event Lessor elects to terminate this Agreement during the First Termination Period, Lessor will pay to Lessee an amount equal to the Termination Payment (as defined herein) increased by twenty percent (20%). Payment of such amount will be upon the terms and conditions set forth in Section 1.3(f), below. Lessor will also reimburse Lessee for its reasonable moving expenses.

(b) **Lessor's Right to Terminate after Year 50.** After the fiftieth (50<sup>th</sup>) anniversary of the Commencement Date (the "Second Termination Period"), Lessor may elect to terminate this Agreement for any or no reason; provided, however, that Lessor has first provided Lessee with the Termination Notice. In the event Lessor elects to terminate this Agreement during the Second Termination Period, Lessor will pay to Lessee the Termination Payment. Lessor will also reimburse Lessee for its reasonable moving expenses.

(c) **Termination of Lease by Expiration of Term.** Upon the termination of this Agreement by expiration of the Term after the end of the ninety-ninth (99<sup>th</sup>) year from the Commencement Date, Lessor is not obligated to pay Lessee the Termination Payment or any other payment for the value of the Improvements.

(d) **Lessee's Right to Terminate.** Lessee may elect, at any time during the Term, to terminate this Agreement for any or no reason. Except as set forth in Section 12.2, below (Lessor's default), in the event Lessee elects to terminate this Agreement, the Improvements (excluding all personal property and trade fixtures therein located) will become the sole and exclusive property of Lessor, without payment to Lessee by Lessor.

(e) **Termination Notice.** Before Lessor may exercise its right to terminate this Agreement under Subsections (a) or (b), above, or Lessee under Subsection (d), above, Lessor or Lessee, whichever is applicable, must first give the other not less than five (5)



years' prior notice of its intention to terminate this Agreement (the "Termination Notice"). The Termination Notice must follow the notice requirements set forth in Section 16.1, below.

(f) **Termination Payment.** The "Termination Payment" is an amount equal to the fair market value of the Improvements (not including the rest of the Premises), determined not more than three (3) months before the actual termination date. The fair market value of the Improvements will be determined by a mutually acceptable real estate appraiser licensed by the Pennsylvania State Board of Certified Real Estate Appraisers, certified to appraise both residential and non-residential real property. In the event Lessor and Lessee cannot agree upon a mutually acceptable appraiser, both Lessor and Lessee will obtain their own appraisals, at their own cost, and the fair market value will be the average of both appraisals. In conducting the appraisal, the appraiser or appraisers will disregard the fact that the Improvements are located on property zoned by Lessor as a preservation district. Instead, the appraiser or appraisers will conduct the appraisals as though the Improvements were located on property zoned to permit commercial office space on a lot with the minimum necessary area, minimum necessary road frontage and any other minimum necessary condition met. The Termination Payment must be made to Lessee on the date the termination of this Agreement becomes effective in United States Currency or other form of immediately available funds reasonably acceptable to Lessee.

## **ARTICLE 2**

### **RENT AND CONSIDERATION**

**Section 2.1 Rent.** In consideration of the lease of the Premises, Lessee shall pay to Lessor on the Commencement Date the sum of One Dollar (\$1.00). On the first anniversary of the Commencement Date and continuing on the same day each consecutive year thereafter during the Term, Lessee will pay to Lessor the amount of One Dollar (\$1.00).

**Section 2.2 Manner of Payment.** All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid, in lawful money of the United States, to Lessor at the address set forth above or at such other place as Lessor shall from time to time designate by written notice to Lessee.

**Section 2.3 Additional Consideration.** In the event Lessee constructs its new headquarters on the Premises as permitted by this Lease and the Tri-Party Agreement, and after Lessee has received a Certificate of Occupancy or other similar approval to enable Lessee to use the Premises as its permanent, full-time headquarters, then, as further consideration for this Lease, Lessee will promptly transfer all of its rights in and to its leasehold interests to the property known and numbered as 25 North 11<sup>th</sup> Street, in the City of Reading, including the Lessee's leasehold improvements upon such property.

## **ARTICLE 3**

### **IMPROVEMENTS TO BE CONSTRUCTED BY LESSEE AT THE PREMISES**

**Section 3.1 Improvements by Lessee.** Lessee will be permitted to construct a new headquarters on the Premises, as set forth in Section 3.1 of the Tri-Party Agreement (the "Improvements"). Lessor understands and acknowledges that as of the date hereof, the existing improvement located on the Premises that is commonly known, and hereinafter referred to, as the "Boathouse" is afflicted with a constant, overwhelming and malodorous aroma, the source of which is yet undetermined. In the event such smell is not remediated by Lessor promptly after the complete execution of this Agreement, and/or Lessee determines that such smell cannot be easily or economically remediated, then Lessee will have the option of demolishing the Boathouse when it constructs the Improvements. In the event Lessee elects to demolish the Boathouse, Lessee will not be responsible to replace the

same. As used hereinafter, and unless expressly indicated otherwise, "Improvements" shall mean the Improvements and the Boathouse, if the Boathouse is not demolished. Except as expressly set forth herein, Lessee shall solely own the Improvements and all personal property, trade fixtures and fixtures located thereupon and therein.

**Section 3.2 Payment for Improvements.** Lessee shall be responsible for the entire cost of the Improvements and, if applicable, for the costs of demolishing the Boathouse.

#### **ARTICLE 4**

##### **RESPONSIBILITIES AND COVENANTS OF LESSEE AND LESSOR**

**Section 4.1 Lessee's Responsibilities for the Premises.** In addition to other costs and expenses set forth elsewhere in this Agreement that are expressly made the responsibility of Lessee, Lessee shall have the responsibility of providing, paying for, or obtaining the following for the Premises, during the Term, at the Lessee's sole cost and expense:

- (i) The Improvements.
- (j) Subject to the Tri-Party Agreement, the maintenance of the Premises as detailed in Section 5.1 below. In the performance of said duties, the Lessee agrees to confer with Alvernia University on issues involving the maintenance of those areas in close proximity to the portions of Angelica that are subject to a separate lease agreement between the Lessor and Alvernia University.
- (k) The maintenance and management of the "wetlands" in that portion of the Premises identified in Zone 2 on Exhibit A in accordance with the Angelica Management Plan as developed by the Environmental

Management Committee effective as of March of 2013, as amended, modified, replaced or otherwise changed; provided, however, that Lessee's obligations thereunder shall not be unreasonably or materially increased in any such amendment, modification or replacement. A copy of said Angelica Management Plan is attached hereto and made a part hereof as **Exhibit B**.

- (l) In the event that the Lessor, Lessee and Alvernia mutually agree that major repairs, improvements, upgrades, and/or repaving of the parking lot and roadways (excluding the roadway set forth in Section 4.2(a), below and not including the Improvements) located within Angelica are necessary, the Lessee and Alvernia shall each pay fifty percent (50%) of such costs; provided, however that any parking lots or roadways that service a portion or portions of Angelica that are exclusively leased to either Lessee or Alvernia shall be the full responsibility of such. If the parties are unable to mutually agree on the need and extent of such repairs, etc., said dispute shall be resolved in accordance with Section 19.1 hereunder. For purposes of this section, "major" shall refer to costs in excess of the collective amount of Ten Thousand Dollars (\$10,000.00).
- (m) Subject to the Tri-Party Agreement, the programming and scheduling of programs at the Boathouse.

**Section 4.2 Lessor's Responsibilities for the Premises**. In addition to other costs and expenses set forth elsewhere in this Agreement that are expressly made the

responsibility of Lessor, Lessor shall have the responsibility of providing, paying for, or obtaining the following for the Premises, at the Lessor's sole cost and expense:

- (a) The ownership, control, repair and maintenance responsibilities for St. Bernadine Street as the public roadway through Angelica to Route 10, which Lessor shall maintain as public road for the Term.
- (b) The primary police, fire, emergency, security and public safety duties at Angelica including the enforcement of all laws, codes and ordinances.
- (c) Lessor is responsible to remediate the mechanical and other defects in the Boathouse that are existing as of the date of this Agreement, including, without limitation, the malodorous aroma mentioned above, and certain defects with the HVAC and alarm systems.

**Section 4.3 Compliance with Law.** The Lessee shall not use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Lessee shall at all times ensure that its use of the Premises is within full compliance with all applicable statutes and ordinances.

**Section 4.4 Permits and Licenses.** The Lessee shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for its use of the Premises as set forth herein.

**Section 4.5 No Violation of Insurance Contracts.** The Lessee and Lessor shall not use the Premises in any manner which would make void or voidable any insurance required

to be carried by the Lessor or the Lessee or which will make it impossible for either party to obtain fire, general liability or other insurance.

**Section 4.6 No Discrimination.** The Lessee covenants and agrees that during its use of the Premises, it will not discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

**Section 4.7 No Change in Use of Angelica.** During the Term, Lessor will neither change the zoning classification of Angelica from its classification existing as of the Commencement Date nor permit the character or use of Angelica to be developed or used in any manner not permitted by said zoning regulations.

## **ARTICLE 5**

### **REPAIR, REPLACEMENT AND MAINTENANCE; UTILITIES; SERVICES**

**Section 5.1 Lessee's Obligations.** Subject to the Tri-Party Agreement, Section 4.2, above, and Section 5.3, below, the Lessee shall have the responsibility for the repair, replacement and maintenance of the Improvements, and the payment of all costs and expenses related thereto, including, without limitation, the roof, walls, windows, doors, foundation, HVAC, plumbing, electrical and other systems located within the Improvements. Lessee shall maintain the Premises, including, but not limited to, trimming and care of grass/lawn areas, trees and shrubbery (limited to those located within grass/lawn areas) and trash removal at the Premises. Lessee will be solely responsible for payment of Lessee's usage of all utility services to the Improvements, including, without limitation, electric service, water service, sewer service and gas service. Lessee will be responsible for all other desired services to the Improvements, including phone, internet and janitorial services.

**Section 5.2 Lessee's Maintenance Standards.** Lessee's maintenance of the Premises shall be performed in a good, workmanlike manner and condition. Lessor's repair,

replacement and maintenance of the Improvements will be to that standard acceptable to Lessee, in Lessee's sole discretion.

## **ARTICLE 6**

### **GOVERNMENTAL APPROVALS**

**Section 6.1 Lessee's Responsibility to Obtain Government Approvals.** The Lessee shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The Lessor will support and cooperate with the Lessee in any efforts to gain necessary governmental, municipal or other local, state or federal agency approvals on a timely basis, including by confirming or affirming Lessee's standing to obtain such approvals.

## **ARTICLE 7**

### **INSURANCE**

**Section 7.1 Casualty Insurance.** The Lessee shall keep the Improvements insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Extended Coverage Insurance".

**Section 7.2 Liability Insurance.** Lessor and the Lessee shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury/death and property damage. The Lessor and the Lessee, will each, at their sole cost and expense, obtain and maintain insurance with insurance companies licensed to do business in the Commonwealth of Pennsylvania for general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, officers, licensees and invitees. If the Lessor is self-insured, the Lessor shall

provide Lessee with proof of adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

**Section 7.3 Additional Insureds.** The Lessor and the Lessee shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

## **ARTICLE 8**

### **INDEMNIFICATION**

**Section 8.1 Indemnification by Lessor.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessee, its directors, officers, employees, agents, licensees or invitees, the Lessor agrees to and does hereby indemnify and hold the Lessee harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from: (a) any and all damage to any person or property, caused by the acts or omissions of its officers, agents, employees, licensees or invitees (which shall include persons who visit Angelica for recreational or other purposes unrelated to Lessee's activities), or (b) the breach by Lessor of the provisions of this Agreement.

**Section 8.2 Indemnification by Lessee.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessor, its officers, agents, employees, licensees and invitees (which shall include persons who visit Angelica for recreational or other purposes unrelated to Lessee's activities), the Lessee agrees to and does hereby indemnify and hold the Lessor harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from: (a) any and all damage to any person or property, caused by the acts or omissions of Lessee's directors, officers, agents, employees, licensees and invitees, (b) any penalty, damage or charge



incurred or imposed by reason of Lessee's violation of law or ordinance, including, but not limited to zoning and building code ordinances; or (c) the breach by Lessee of the provisions of this Agreement.

**Section 8.3 Indemnification not Limited by Insurance**. Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish the Lessor's or Lessee's responsibilities hereunder.

**Section 8.4 Survival of Termination of Agreement**. These indemnifications of the Lessor and the Lessee shall survive the termination of this Agreement.

**Section 8.5 Waiver of Immunity**. Lessor hereby waives any statutory immunity and limit on its liability as between the Lessor and the Lessee for claims arising pursuant to this Agreement.

## **ARTICLE 9**

### **ENVIRONMENTAL**

**Section 9.1 Compliance with Environmental Laws**. Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Premises.

**Section 9.2 Environmental Indemnification**. Lessor and Lessee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and

for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or activities conducted by the party thereon, unless the environmental conditions are caused by the other party; provided, however, that the Lessee shall have no duty to hold harmless and/or indemnify the Lessor hereunder for anything related to any conduct, failure to act and/or the condition of the Premises that occurred or was in existence prior to the date of this Agreement.

### **Section 9.3 Indemnifications Survive**

**Termination of Agreement.** The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

## **ARTICLE 10**

### **CONDEMNATION**

**Section 10.1 Condemnation.** In the event Lessor receives notification of any condemnation proceedings affecting the Premises, Lessor will promptly provide notice of the proceeding to Lessee. If a condemning authority takes all of the Premises, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for

Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. Except as set forth below, Lessor is entitled to all sums paid by the condemning authority for the Premises, but Lessor must pay Lessee for the fair market value of the improvements, calculated as set forth in Section 1.3(f), above. Lessee is permitted to recover from the condemning authority reimbursement for its moving expenses and other similar expenses incurred by Lessee because of the condemnation of the Premises.

## **ARTICLE 11**

### **CASUALTY**

**Section 11.1 Casualty.** Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty provided that said party has actual knowledge of the casualty. Lessee is solely entitled to all insurance proceeds for casualty damage to the Improvements.

## **ARTICLE 12**

### **DEFAULT AND RIGHT TO CURE**

**Section 12.1 Default by Lessee.** The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of

Lessee. If Lessee remains in default beyond any applicable cure period, Lessor agrees to promptly inform Alvernia and Alvernia and Lessor shall have a period of not less than thirty (30) days from such notice to negotiate an assignment of this Agreement to Alvernia.

Thereafter, provided this Agreement

Lessor will have the option of terminating this Agreement, assigning this Agreement to Alvernia University or obtaining such other remedy at law or in equity as may be available to Lessor.

**Section 12.2 Default by Lessor.** The following will be deemed a default by Lessor and a breach of this Agreement: Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, the Lessee will have the right to exercise any and all rights available to it under law and equity, including but not limited to termination of this Agreement. In the event Lessee elects to terminate this Agreement, Lessor will pay to Lessee the Termination Payment, increased by twenty percent (20%).

**Section 12.3 Alvernia Default.** In the event Alvernia University defaults under the Alvernia Lease and Lessor would otherwise have the ability to terminate the Alvernia Lease, Lessor will, instead of terminating the Alvernia Lease, permit Lessee, at its option, to take an assignment of the Alvernia Lease, or to enter into a new lease with Lessor for the property that is the subject of the Alvernia Lease on terms identical to those contained in the Alvernia

Lease, with the term adjusted so that Lessee's term for such property does not exceed the original term of the Alvernia Lease.

## **ARTICLE 13**

### **SIGNS**

**Section 13.1 General Signage.** Subject to applicable ordinances, the Lessee may install that signage permitted under the Tri-Party Agreement at the Premises including, but not limited to, Section 13.2 of the Tri-Party Agreement.

## **ARTICLE 14**

### **ASSIGNMENT**

**Section 14.1 Assignment.** At any time during the Term, Lessee may elect to assign this Agreement and all Lessee's right, title, interest, duties and obligations hereunder to a third party, subject, however, to Lessor's approval, which approval shall not be unreasonably withheld. In the event Lessor approves Lessee's assignment of this Agreement to a third party, Lessee shall have no further responsibility or obligation to Lessor, whatsoever. Lessor may not assign this Agreement to any third party without the prior written consent of Lessee.

## **ARTICLE 15**

### **ENTIRE AGREEMENT**

**Section 15.1 Entire Agreement.** This Agreement and the Tri-Party Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by Lessor and Lessee. This

Agreement shall be binding on the parties hereto, and their respective successors and assigns.

## **ARTICLE 16**

### **NOTICES**

**Section 16.1 Notices.** Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

|                    |  |
|--------------------|--|
| If to Lessor:      | City of Reading<br>815 Washington Street<br>Reading, PA 19601<br>Attn: Managing Director                                   |
| With a copy to:    | Charles D. Younger, Esquire<br>City Solicitor<br>815 Washington Street<br>Reading, PA 19601                                |
| If to Conservancy: | Berks County Conservancy<br>25 N. 11 <sup>th</sup> Street<br>Reading, PA 19601<br>Attention: Kimberly J. Murphy, President |
| With a copy to:    | Christopher J. Hartman, Esquire<br>Hartman Shurr<br>1100 Berkshire Boulevard, Suite 300<br>Wyomissing, PA 19610            |

## **ARTICLE 17**

### **SEVERABILITY**

**Section 17.1 Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

## **ARTICLE 18**

### **APPLICABLE LAW**

**Section 18.1 Applicable Law.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both parties. The parties consent to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

## **ARTICLE 19**

### **MEDIATION**

**Section 19.1 Mediation.** Notwithstanding the provision of Article 18 set forth above, any disputes between Lessor and Lessee shall first be submitted to mediation through the Berks County Bar Association Civil Dispute Resolution Program, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

## **ARTICLE 20**

### **RELATIONSHIP OF THE PARTIES**

**Section 20.1 Relationship of the Parties.** It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Lessee and Lessor shall use the Premises in accordance with Section 1.1 and the other terms of this Agreement. Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

## **ARTICLE 21**

### **SURRENDER**

**Section 21.1 Surrender.** Upon termination of this Agreement, Lessee shall peaceably surrender the Premises to Lessor in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, reasonable wear and tear and damage by casualty excepted.

## **ARTICLE 22**

### **MEMORANDUM OF LEASE**

**Section 22.1 Memorandum of Lease.** The parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the



office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the parties in this Lease Agreement; (ii) the term of this Lease; (iii) the location of the Premises subject to the Lease; (iv) the Lessee's option to purchase and right of first refusal to purchase the Premises and such other terms or items of information as the parties deem necessary.

## **ARTICLE 23**

### **LESSEE'S RIGHT OF FIRST REFUSAL and OPTION TO PURCHASE**

**Section 23.1 Lessee's Right of First Refusal.** If, at any time during the Term, Lessor desires to list for sale, sell or shall receive a bona fide offer from any third party to purchase Angelica or any portion of Angelica, including, without limitation, the Premises (the "Proposed Sale"), Lessee shall have a Right of First Refusal as follows:

(a) Lessor shall give Lessee notice in writing of the Proposed Sale, which notice shall include the price, terms and conditions of the Proposed Sale ("Lessor's Notice"). Included with Lessor's Notice shall be such information as shall reasonably enable Lessee to establish all of the terms of the offer and that the offer is bona fide, including (without limitation) a true and correct copy of the letter of intent or agreement of sale, if any. If the Right of First Refusal arises because the Lessor desires to sell (and not because of receipt of a bona fide offer to purchase from a third party), the purchase price in the Lessor's Notice shall be based on a "then current" market valuation/appraisal of Angelica, as determined by a mutually acceptable and certified real estate appraiser in an appraisal report.

(b) Upon receipt of the Lessor's Notice, the Lessee shall have a period of seventy-five (75) days to exercise the Right of First Refusal to purchase Angelica. Lessee understands and acknowledges that Alvernia University has an identical Right

of First Refusal in the Alvernia Lease. In the event that Alvernia University also elects to purchase Angelica, Lessee's (and Alvernia's) Right of First Refusal will be reduced to the right to purchase the Premises, for the Lessee, and the right to purchase the remaining portions of Angelica not including the Premises and not including the areas that are the subject of the Tri-Party Agreement, for Alvernia University. Lessee and Alvernia University will have a further forty-five (45) days to prepare and agree to a Declaration of Condominium providing for two (2) units corresponding to those portions of Angelica that are leased solely to each party, with common elements or areas being those portions of Angelica that are shared between Lessee and Angelica as set forth in the Tri-Party Agreement. In the event Lessee and Alvernia University are able to agree to an acceptable Declaration of Condominium within the said forty-five (45) day period, then Lessee and Alvernia University will, within thirty (30) days from the end of the forty-five (45) day period, purchase Angelica as tenants in common, each owning fifty percent (50%). Promptly after such purchase, Lessee and Alvernia University will record the Declaration of Condominium that has been agreed to between them. In the event Lessee does not elect to purchase Angelica, Lessor may sell the same to Alvernia University, if Alvernia University has elected to purchase Angelica, or to such third party with whom Lessor agrees to sell Angelica. In the event of a sale of Angelica to Alvernia University or a third party, this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their hands and seals on the day and year first above written.

WITNESS:

LESSEE:

BERKS COUNTY CONSERVANCY

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: Kimberly J. Murphy  
Title: President

LESSOR:

CITY OF READING

Attest: \_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_  
Chief Clerk  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**PREMISES**

**EXHIBIT B**

ANGELICA MANAGEMENT PLAN





**R E S O L U T I O N N O. \_\_\_\_\_**

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS  
FOLLOWS:

That Lynn Smith is reappointed to the Animal Control Board with a term  
ending September 9, 2016.

Adopted by Council \_\_\_\_\_, 2013

\_\_\_\_\_  
Marcia Goodman-Hinnershitz  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk



**R E S O L U T I O N N O.**\_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS  
FOLLOWS:

That Jeff Darlington is reappointed to the Board of Ethics with a term ending  
September 9, 2016.

Adopted by Council\_\_\_\_\_, 2013

\_\_\_\_\_  
Marcia Goodman-Hinnershitz  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

**R E S O L U T I O N N O.**\_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS  
FOLLOWS:

That Brian Fichthorn is reappointed to the Main Street Board with a term  
ending December 31, 2016.

Adopted by Council\_\_\_\_\_, 2013

\_\_\_\_\_  
Marcia Goodman-Hinnershitz  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

**R E S O L U T I O N N O. \_\_\_\_\_**

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS  
FOLLOWS:

That Pamela Cianciosi is reappointed to the Citizens Advisory Board with a  
term ending September 9, 2016.

Adopted by Council \_\_\_\_\_, 2013

\_\_\_\_\_  
Marcia Goodman-Hinnershitz  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

**R E S O L U T I O N N O.**\_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS  
FOLLOWS:

That Craig Breneiser is appointed to the Fire Civil Service Board with a term  
ending September 9, 2017.

Adopted by Council\_\_\_\_\_, 2013

\_\_\_\_\_  
Marcia Goodman-Hinnershitz  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

**R E S O L U T I O N N O.**\_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS  
FOLLOWS:

That Jared Barcz is appointed to the Zoning Hearing Board with a term ending  
January 1, 2014.

Adopted by Council\_\_\_\_\_, 2013

\_\_\_\_\_  
Marcia Goodman-Hinnershitz  
Vice President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

